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By

J. R. MUDHOLKAR
Former Judge, Supreme Court of India

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PREFACE

In this series of lectures on the subject of the Press Law of India I have tried to cover all its aspects, including the historical one. I hope these lectures will interest not only the people connected with journalism but also the lay public.

In preparing these lectures I have relied principally on my personal experiences as Chairman of the Press Council. I have also helped myself to such literature on this subject as I could get at. In both the matters I have to acknowledge the valuable help which I received from Mr. P. B. Rao, Asstt. Editor, Supreme Court Reports, who was the Secretary of the Press Council while I was the Chairman.

Last but not the least my thanks are due to the authorities of the Vivekananda Institute of Culture for making arrangements for the lectures, to the authorities of the Calcutta University and in particular to Mr. J. Pal, Estate and Trust Officer of the University, for their fullest co-operation, and to the judges and retired judges of the Calcutta High Court and others for sparing their valuable time for presiding over the lectures.

MR. JUSTICE J. R. MUDHOLKAR

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INTRODUCTION

I feel greatly honoured on having been asked by the University authorities to deliver the Tagore Law Lectures for the current year. The subject chosen by them is the Press Laws of India. This is a subject in which I have a deep and abiding interest. But my task in preparing these lectures has become difficult for the reason that there is no authentic book on Press Laws in this country and in fact there is such paucity of material that I had to wade through various books and get a bit of information from here and a bit from there and so on. I am sure that this learned audience would bear with me if I skip over aspects of this vast subject which in my view are not very pertinent to the discussion or because there is little reliable material.

Talking on the freedom of the Press, Mr. Jawaharlal Nehru once said: "I would rather have a completely free Press, with all the dangers involved in the wrong use of that freedom, than a suppressed or regulated Press". When he said this he was echoing the ideas of Jefferson who once said that "......were it left to me to decide whether we should have government without newspapers or newspapers without a government I should not hesitate a moment to prefer the latter."

Pandit Jawaharlal Nehru, as most of us know, was a great democrat. He could have been a dictator had he wanted to become one. But he knew that of all the forms of government in existence in the world, democracy was the best form. His concept of free and open society based on freedom of expression and a free Press placed the country on the right road to social progress, modernisation and economic development. Mr. Nehru knew that by adopting totalitarian methods it was possible to achieve rapid progress, more particularly in a country which is steeped in poverty and of which nearly 80% of the population is illiterate. By his deep respect for human dignity he eschewed totalitarian methods and chose the hardest way to progress, however slow and halting the pace.

Freedom of speech and expression is at the basis of Anglo-American Jurisprudence. It is said that the Press keeps governments in due subjection to their duties. The struggle for this freedom among the Western nations and particularly among the English-speaking people extends over a number of centuries and represents a fundamental development in the philosophies of these peoples. In all democratic countries of the world the right of free speech holds a pre-eminent position among all other basic rights. It is regarded as the very foundation, the indispensable condition, for the existence of every other right. It is perhaps for this reason that the framers of the Indian Constitution have included "Liberty of thought and expression" in the Preamble and placed this right as the first among seven fundamental freedoms guaranteed to all citizens of this country. Free exchange of ideas and free debate are considered an essential part of the government of a free country. For, without such freedom the government of the day may not remain responsive to the will of the people. This freedom includes not merely the right to express one's own views but as a necessary corollary also imposes a duty to tolerate views opposed to one's own. Democratic experience has shown that spread of information from different and even conflicting sources in the widest possible manner is important for the welfare of the people. In a democratic form of government an intelligent and active participation of the people in the affairs of the community, be they local or national, is essential.

Dealing with the role of a free Press in a democracy, the First Royal Commission on Press has pointed out:

> "The democratic form of society demands of its members an active and intelligent participation in the affairs of their community, whether local or national. It assumes that they are sufficiently well informed about the issues of the day to be able to form the broad judgments required on an election, and to maintain between elections the vigilance necessary in those whose governors are their servants and not their masters. More and more it demands also an alert and informed participation not only in purely political processes but also in the efforts of the community to adjust its social and economic life to increasingly complex circumstances. Democratic society, therefore, needs a clear and truthful account of events, of their background and their causes; a forum for discussions and informed criticism; and a means whereby individuals and groups can express a point of view or advocate a cause."[1]

The right to free speech, it is said, "is absolutely indispensable for the preservation of a free society in which government is based upon the consent of an informed citizenry and is dedicated to the protection of the rights of all, even the most despised minorities."[2] Patanjali Sastri J. reiterated this view in a different language when he said:

---

[1] Report of the First Royal Commission pp. 100-101.

> "Freedom of speech and of the Press lay at the foundation of all democratic organisations, for without free political discussions no public education, so essential for the proper functioning of the processes of popular government, is possible."[3]

What we call freedom of the Press today is the result of a few centuries of hard-won fight in the name of the people. By the middle of the 19th century a free press in England was regarded as an inestimable boon. The term Fourth Estate became a popular name for the Press. By the early part of the 20th century it was acknowledged as a public right in many parts of the civilized world, notwithstanding the many drawbacks that the freedom has.

Freedom of expression therefore is among the foremost of human rights. It is the communication and practical application of individual freedom of thought. Irrespective of the system of administration, various constitutions make a mention of the freedom of expression. While freedom of thought is a personal freedom, freedom of expression is a collective freedom, whose character becomes more and more pronounced as the technical methods of their diffusion multiply and improve.

A free press, with its privilege to publish and comment on matters of grave importance, has long been considered by all democratic countries as a great instrument in fashioning the basic tenets of democracy and to promote the efficient functioning of a democratic government. Indeed, a free press with its undoubted powers and resources to speak on important and controversial issues of the day with a view to enlighten the people of the nation on matters of general importance, as also to champion the cause of the weak and oppressed, to point out the shortcomings of the governments of the day and to help development of a clean, healthy, competent, candid and critical yet one having a constructive bent of mind is a desideratum in modern democracies. The Press is described as the sentinel on the *qui vive*.

What does freedom of Press mean? It is a term which is both elastic and ambiguous. The First Royal Commission on the Press in England (1947-49) chose not to discuss the meaning and significance of the concept. The Indian Press Commission has pointed out that the content of the expression freedom of the Press has been variously understood and various definitions have been given by various persons. Some called it the freedom to publish any matter by printed word without any legal restraint or prohibition; freedom from prejudices and preconceived notions; freedom from executive control of government; freedom from influence of advertisers and pressure groups and freedom from dependence on others for financial assistance. But the Press Commission expressed the view that what is meant by this concept is "freedom to hold opinions, to receive and to impart information through the printed word without any interference from any public authority."[4] In other words, it is the right of the citizen to publish what he chooses without obtaining any prior permission from any authority, subject only to the responsibility before the law for what he has chosen to publish. As a corollary it may be stated that the Press should have full access to all sources of information so that the people may be adequately informed on all matters of local, national or international importance.

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[2] *Speiser* v. *Randall*, 357 U.S. 513.

[3] *Romesh Thappar* v. *State of Madras*, 1950 S.C.R. 594.

The term "freedom of expression" includes within its range a wide variety of expressions like expressing one's views freely either by signs, word of mouth, writing, printing or by carrying banners with writings on them. Courts in England, America and India have interpreted that this right includes not merely one's right to express or propagate one's own views but also the right to publish and propagate the views of others. It is for this reason that the freedom of the Press is included within this right. An important aspect of this right is that it assumes that there is another party to whom one's ideas and views are expressed or communicated. It therefore includes the right to publish, distribute and circulate as far and wide as one wishes to as also the right of the other persons to receive the matter expressed or distributed. In clear and unambiguous terms the Supreme Court has said that "there can be no doubt that freedom of speech and expression includes freedom of propagation of ideas, and that freedom is secured by freedom of circulation. Liberty of circulation is as essential to that freedom as the liberty of publication. Indeed, without circulation the publication would be of little value."[5]

A newspaper has the right to print anything that it thinks fit for publication. But the freedom that it enjoys is not unbridled. It is subject to the laws of the land. Every free man has an undoubted right to express his sentiments before the public in the manner he likes provided he does not transgress the limits set by law. To forbid him to do so is no doubt to destroy the freedom of the Press. But it must nevertheless be borne in mind that if he publishes what is improper, mischievous or illegal he must take the consequences of his own temerity.

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[4] Press Commission Report pp. 357-358.

[5] *Romesh Thappar v. State of Madras*, 1950 S.C.R. 594.

Therefore, what the Press must pay particular attention to is that there are limitations on what newspapers can safely print. Public order, decency and morality, friendly relations with foreign States and such other things must be safeguarded. Words on irresponsible lips do not become transformed into a protected right when printed on paper. The protective cloak of Press freedom must not be thrown over wrong-doings or used to accentuate or encourage offences against the criminal law of the land. We should never allow a country's freedom to be used for the destruction of that freedom. The law permits a citizen to say, publish or write what he pleases. But if he misuses this liberty he must be punished. In case of an unjust attack on an individual, the person defamed may sue for damages or file a complaint in a criminal court. In more serious offences like sedition, incitement to commit offences, etc., he will be liable to be tried in accordance with law.

The Press in India, as in England, does not enjoy any special rights other than those to which a citizen is entitled. The position of writers contributing articles to a newspaper is substantially the same as that of persons writing letters to the Press. As Dicey remarked:

> "The law of England does not recognise in general any special privileges on behalf of the Press. The law of the Press as it exists in England is merely part of the law of libel and the so called liberty of the press is a mere application of the general principle that no man is punishable except for a distinct breach of law."[6]

In the words of Ivor Jennings: "Anything is lawful which is not unlawful. There is no more a right of free speech than there is a right to tie up my shoe lace."[7] Turning to the position in India we find the Privy Council stating this:

> "The freedom of the journalist is an ordinary part of the freedom of the subject, and to whatever lengths the subject in general may go, so also may the journalist, but apart from statute law, his privilege is no other and no higher.

---

[6] *Law of the Constitution*, A. V. Dicey, 9th Edn. p. 240.

[7] *The Law and the Constitution*, Sir Ivor Jennings, 4th Edn. 247.

> The responsibilities which attach to his power in the dissemination of printed matter may, and in the case of a conscientious journalist do, make him more careful: but the range of his assertions, his criticism or his comments, is as wide as, and no wider than, that of any other subject."[8]

Under the Constitution the Press cannot claim any higher right than the ordinary citizen[9] and is subject to the laws of the land. Thus it is not immune from the tax-laws nor from the general laws relating to industrial relations including those regulating conditions of service of its employees.[10]

The position is also the same in the United States of America though the constitutional provision in that country is different from ours. The law of that country does not confer any privileges on the Press nor does it exempt the Press from any laws.

There was some controversy in the Constituent Assembly whether specific mention should be made of freedom of Press and whether the expression "freedom of speech and expression" includes the Press. Dr. Ambedkar explained the position thus:

> "The Press is merely another way of stating an individual or a citizen. The Press has no special rights which are not to be given to or which are not to be exercised by the citizen in his individual capacity. The editor of a press or the manager are all citizens and, therefore, when they choose to represent any newspapers they are merely exercising their right of expression and in my judgment no special mention is necessary of the freedom of Press at all."[11]

Referring to the "freedom of speech and expression," the Press Commission said:

> "This freedom is stated in wide terms and includes not only freedom of speech which manifests itself by oral utterances, but freedom of expression, whether such expression is communicated by written word or printed matter. Thus, freedom of the Press, particularly of newspapers and periodicals, is a species of which the freedom of expression is a genus. There can, therefore, be no doubt that freedom of the Press is included in the fundamental right of the freedom of expression guaranteed to the citizens under Article 19(1)(a) of the Constitution."[12]

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[8] *Arnold* v. *King-Emperor*, (1914) 18 C.W.N. 785 (P.C.).

[9] *M. S. M. Sharma* v. *Krishna Sinha*, A. 1959 S.C. 395.

[10] *Express Newspapers Ltd.* v. *Union of India.*,

[11] C.A.D. dated 2.12.48 p. 780.

[12] Report of the Press Commission, p. 358.

The framers of the Constitution have placed "very narrow and stringent limits...........to permissible legislative abridgement of the right of free speech and expression" even though a freedom of such amplitude might involve risks of abuse.[13] But as pointed out by the Supreme Court the "framers of the Constitution may well have reflected, with Madison who was the 'leading spirit in the preparation of the First Amendment of the Federal Constitution' that 'it is better to leave a few of its noxious branches to their luxuriant growth than, by pruning them away, to injure the vigour of those yielding the proper fruits."[14]

In a number of cases the Supreme Court has held over and over again that any restriction, whether direct or indirect, imposed by Parliament upon the right of freedom of speech and expression other than those mentioned in clause (2) of Art. 19 would be outside the scope of this Article. Pre-censorship,[15] prohibition on import of printed and published material[16], placing a ban on printing and publishing material of a specified nature[17], demanding security from the Press[18] or placing any restriction which would amount to an indirect curb on free circulation of a newspaper or prescribing a limitation on the number of pages to which a newspaper or a class of newspapers should confine itself[19] have all been held to be bad in law.

It has also been established by decided cases that any attempt on the part of the Government to impose a tax which is deliberately calculated to limit the circulation of information or which would impose a prohibitive burden so as to restrict its circulation or impose a penalty on its right to choose the instruments for its exercise or to seek an alternative media or any law which would undermine its independence by driving it to seek Government aid[20] would be unconstitutional. In Sakal Papers case[1] it was held that anything done which would directly affect circulation, as for example, placing a restriction on advertisement space is an unreasonable restriction since it is bound to raise the price of the newspaper.

Clearly therefore where a restriction does not strictly fall within the limitations enumerated in clause (2) of Article 19 or the restriction is remote it is bad and is invalid.[2] Apart from substance, the court also examines to see whether the method of imposing the restriction is also reasonable.[3]

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[13] Ramesh Thappar (supra).

[14] Ramesh Thappar (supra).

[15] *Brij Bhushan* v. *State of Delhi*, 1950 S.C.R. 608.

[16] Romesh Thappar (supra).

[17] *Virendra* v. *State of Punjab*, 1958 S.C.R. 308.

[18] *State of Bihar* v. *Shailabala*, 1952 S.C.R. 654.

[19] *Sakal Papers* v. *Union of India*, 1962 S.C. 305.

[20] *Express Newspapers case* (*supra*).

[1] *Sakal Papers case* (supra).

As already said,, the right of free speech and expression, like the other rights guaranteed by the Constitution, is not absolute but is subject to limitations that can be imposed by law. The real test for ascertaining whether, in a given case the freedom of the Press has been breached is to see, firstly, whether the press is restricted unreasonably by governmental action before or after the publication. The next step is to ascertain whether the press is at liberty to cover governmental activities and comment fairly and accurately thereon.

Certain amount of social control of the Press is, of course, necessary for the protection of the right. Where the right has to be harmonised with the duties of individuals constituting the society the right must be subjected to certain restrictions. But these restrictions must not be such as would virtually destroy the freedom itself. What is objectionable is not the restrictions themselves but the imposition of arbitrary and unnecessary restrictions. Just as it is impossible for human progress without basic freedoms, it is impossible to make any progress without a measure of regulation and discipline. What makes the freedom usable is the existence of essential compensatory limitations. Taking note of the need for placing reasonable restrictions, the Supreme Court has pointed out:

> "It cannot be overlooked that the Press is a mighty institution wielding enormous powers which are expected to be exercised for the protection and the good of the people but which may conceivably be abused and exercised for anti-social purposes for exciting the passions and prejudices of a section of the people against another and thereby disturbing the public order and tranquillity or in support of a policy which may be of a subversive character. The powerful influence of the newspapers for good or evil on the minds of the readers, the wide sweep of their reach, the modern facilities for their swift circulation to territories distant and near must all enter into the judicial verdict and the reasonableness of the restrictions imposed upon the Press has to be tested against this background. It is certainly a serious encroachment on the valuable and cherished right to freedom of speech and expression if a newspaper is prevented

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[2] *Superintendent* v. *Ram Manohar Lohia*, A. 1960 S.C. 633.

[3] *Virendra* v. *State of Punjab*, 1958 S.C.R. 308.

from publishing its own views or the views of its correspondents relating to or concerning what may be the burning topic of the day. Our social interest ordinarily demands the free propagation and interchange of views, but circumstances may arise when the social interest in public order may require a reasonable subordination of the social interest of free speech and expression to the needs of our social interest in public order. Our Constitution recognises this necessity and has attempted to strike a balance between the two social interests which permits the imposition of reasonable restrictions on the freedom of speech and expression in the interests of public order and on the freedom to carry on trade or business in the interests of the general public."[4]

In *Hamdard Dawakhana (Wakf) Lal Kuan* v. *Union of India*[5] the provision of the Act, which prohibited advertisements commending the efficacy, value and importance of certain drugs in the treatment of particular diseases, fell within the scope of freedom of speech and expression was considered. Although advertisement was a form of speech its true character was reflected by the object for the promotion of which it was employed. When it took the form of a commercial advertisement, which had an element of trade or commence, it no longer fell within the concept of freedom of speech. For the object was not propagation of ideas but the commendation of the efficacy, value and importance in treatment of particular diseases by certain drugs and medicines. In such case advertisement was a part of business and had no relationship with what might be called the essential concept of freedom of speech. It could not, therefore, be said that every advertisement was a matter dealing with freedom of speech nor could it be said that it was an expression of ideas. It was for this reason that it was held that the advertisements did not fall within the scope of the constitutional provision.

Clause (2) of Article 19 permits reasonable restrictions being placed on the exercise of the right conferred by clause (1)(a) in the interests of sovereignty and integrity of India, security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. A detailed discussion of these restrictions will follow at the relevant place in the course of these lectures.

"Thou shalt not bear false witness against thy neighbour"

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[4] *Virendra* v. *State of Punjab*, 1958 S.C.R. 308.

[5] (1960) 2 S.C.R. 671.

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Bhagvad Gita is the Biblical injunction to all manking and the says "For a man of honour defamation is worse than death." The Constitution of India permits the State to make laws curtailing the freedom of speech and expression to a limited extent but which may encampass defamation. There have been some representations before the Press Commission urging that the laws of defamation should be changed and made more rigid so that irresponsible newspapers may be brought to book when they indulge in defamation of innocent persons. It is of course true that at times we may be tempted to urge that our libel and slander laws be made more stringent in order to discourage flagrant violations of the law. It is enough to say that those countries which have more rigorous libel laws than our own have experienced that there are some disadvantages in this. To give an example, in several instances the rigour of British libel laws has discouraged a journalist from airing even grave public scandals.

Now I shall advert to the topic of Parliamentary privileges. I have real sympathy for the journalists who feel caught up and somewhat helpless between the vagueness of the law of Parliamentary Privileges and the harshness of the possible penalties. The power conferred on all legislatures by the Constitution is considerably greater than that of any other branch of the State. Its exercise could result in the editor going to prison and not get off by mere payment of a fine. This is the real factor to be taken into consideration. The main objection to the present state of the law is its uncertain and nebulous nature. This is due to the fact that the law of Parliamentary Privileges has remained undefined and the legislatures tend to be oversensitive in regard to their privileges. Attendance at parliamentary debates and the publication of debates are by sufferance only although it is recognised that dissimination of information on debates and parliamentary proceedings is advantageous to democracy and in fact necessary to public safety.

Yet another area on which the journalist has to tread warily is "contempt of court". The function of a newspaper is to give a fair and accurate account of what happens in a court. The public is entitled to admittance in court and to listen to the proceedings. The public is also entitled to know what is going on in the court through newspapers. That is an inherent right of the public and it depends to no little extent on what is called the freedom of the Press. In sum, it is really the freedom of all of us. Turning to the question whether a report is fair and accurate untrammelled by any rule of law, it may

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be stated that if the report is condensed the protection will apply provided that the condensation is fair and accurate. But reporting court proceedings does not pose any much danger as reporting proceedings of Parliament.

I feel that abuse or misuse of the right of freedom of speech which includes the right to dessiminate news and views should be prevented by exercise of self-discipline rather than leave it open to Government to resort to its regulatory powers. As stated earlier, absolute freedom of speech and of the Press does not exist inasmuch as Art. 19(2) of the Constitution does not, subject to Article 13(1), affect existing laws and leaves the door open to the State to enact a law placing reasonable restrictions on the rights conferred by Article 19(1)(a). It is for this reason that a self-regulating body for the preservation of freedom of the Press plays a vital role in a democracy. It is therefore said that so long as there is a free press there should be a Press Council.

As I have said, we should never allow a citizen's freedom to be so used as would result in the destruction of that very freedom for which we have fought so hard. Therefore, in times of crisis like war or external threat or internal unrest, whatsoever may be the theoretical justifications in favour of preserving the freedom of the press, the freedom of the citizen to exercise this fundamental right must be limited for protecting the life and liberty of the people in general.

Freedom to have access to public records is an important aspect of the freedom of the press. Public business is said to be the public's business. There can hardly be any practical utility for the right to freedom of speech and freedom of the press if access to material bearing on matters of public interest is denied. When a Government withholds free access to public records, it stifles the organs of expression, the human voice and the printing press. By long experience a journalist knows that certain matters must be kept secret, at least for some time. But several Governments and public officials keep the Government's business flatteringly confidential. In the nature of things a Government official seldom makes himself or the policies of Government shaped by him look bad. It is the practice of public officials to press in aid the Official Secrets Act to prevent the press from discussing certain matters of public importance to avoid embarrassment to themselves. Where the Press somehow obtains information on such matters the test would be whether the publication was for the public benefit or not. If the Press comes to the conclusion that it

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is so it should publish the information without fear and take the consequences.

Why has democracy proved more just than government by the elite? One obvious reason is that no group of rulers, not even the most intelligent, will be able to judge the effect of a policy upon the people as well as on those whom the policy actually affects. It is a common saying that even the most ignorant man knows better than a shoemaker whether or not the shoe he has made pinches the foot or not. However ignorant our people may be, they have their native intelligence and they can judge the effect of governmental policy by testing its consequences on their own lives and those of their neighbours.

However much one may wish that the newspapers should be free from bias, certain amount of bias is inevitable. The first and foremost safeguard against bias in a free democratic society is the possibility of placing before the reading public alternative viewpoints. In the ultimate analysis, this is the only safeguard, for it is the experience of all democratic countries that political control of journalism is a cure worse than the disease. In a democracy, even the best possible government must lay itself open to scrutiny and criticism. A free market place of ideas is the best sifting ground between right and wrong.

In a democracy it is the Press that largely aids the preservation of all the constitutional guarantees. The question then arises is whether by so doing can it remain really free? The Press is one of the free institutions which is bound to feel the pressure of extremists. In discharging its duty without fear it has to report and interpret information and ideas that may be regarded as inconvenient to many persons, particularly the politicians. This is bound to result in pressure from such groups. When groups of persons are in a position to exert organised pressure, they may, in order to serve their own interest, seem to muffle or silence the voice of the free press. To be able to counteract this the Press must be vigilant. For, as the saying goes eternal vigilance is the price we pay for liberty.

The Press is a private enterprise or in any case an enterprise independent of political authorities. A press enterprise may be that of an individual or may be a collective one. It may be the property of one or more individuals or groups formed into a legal entity distinct from that of the individuals composing it. In either case it is a private enterprise which is formed and carried on in accordance with rules of ordinary law applicable to all the individual and collective private businesses in the country.

If the press is to retain its freedom, it must make itself and keep itself genuinely independent. These two attributes go inescapably hand in hand. If the Press becomes a captive, or may be a captor, of any political party eventually it will kindle in the opposition a demand that it should be brought under some sort of governmental regulation. It will be an evil day if that demand ever prevails. For, in that event, the indispensable condition of press freedom will be destroyed. A free press, be it noted, must be an independent press.

What does press freedom mean? Obviously it means freedom from censorship by the Government and freedom from all kinds of restraints in expressing opinions freely, in an uninhibited manner. A newspaper is a private enterprise operated for private profit combined with the right of the journalist to express his views fearlessly. In India there has been a vigorous controversy on the role of the editor in exercising his freedom. Some of the largely circulated newspapers are owned by some commercial interests who run the newspapers as a subsidiary to their business interests or for exerting political pressure in their own interest. Unlike in America or England the sole or chief proprietor of the bigger newspapers is not a publisher but a big businessman or an industrialist who leaves the control of the newspaper to an executive or a manager who hardly knows the contours of the freedom of the press. In such cases extraneous control increases and the editor becomes no more than a mere scribe of the proprietor. After examining this allegation in some detail the Press Commission came to the conclusion that, among other things, there was a tendency to suppress facts unfavourable to the business interests of the proprietor or to his financial interests. Refuting such allegations a number of leading journalists in this country have pointed out that apart from laying down the editorial policy of his paper, there is hardly any interference by the proprietor of the kind alleged in some quarters. It will be interesting to examine the allegations and counter-allegations of various journalists in this country and examine how far, if any, the freedom of the journalist has been eroded by the prevailing ownership pattern and what remedies could be taken to give the journalist greater freedom.

2

HISTORICAL

The first newspaper in India was started by one James Augustus Hicky who called himself the "late printer to the Honourable Company". By no means a man of any literary attainments, Hicky devoted his *Bengal Gazette* or *Calcutta General Advertiser*, a two-sheet newspaper, mainly to securrilous attacks on the private lives of servants of the Company, including the Governor-General Warren Hastings and his wife. His attacks against the highest in the Company soon landed him in trouble, the most important of which, apart from heavy penalties, was deprivation of the privilege of circulating his newspaper through the General Post Office. Hicky was involved in a number of libel cases. He was also subjected to oppression by the East India Company which left him in utter penury. The next few years saw a few other papers coming up, evidently because all of them assured the Governor-General that they would abide by any regulations made by his Government and that they would tread warily along the trail blazed by Hicky before them. In Madras, the *Madras Gazette* was required to submit to censorship by the Military Secretary before its publication. The newspaper protested against this precensorship with the result that free postage facilities were withdrawn. However, by and large, the Bombay and Madras newspapers generally kept themselves on the right side of the Government, the rare recalcitrants being summarily dealt with on charges of gross libel of the Government. In Calcutta, one William Duane, Editor of the *Bengal Journal*, was persecuted, his house broken into and searched and he was ultimately sent back to England without being given any compensation for the property left behind by him. In a dispatch to the Board of Directors, the Governor-General said that newspapers in Calcutta had assumed "a licentiousness too dangerous to be permitted in this country" and that he, therefore, had to be deported to England. In general, papers were pulled up for various offences, the most important of which related to military subjects. Those editors who were found inconvenient were deported to England. The most significant aspect of this period was that there were no Press laws as such in this country during the latter part of the 18th century. Despite that the pattern of Governmental action was to deport incorrigible editors, deny postal facilities to the unrepentant and to require those who persisted in causing displeasure to the Government to submit either a part or the whole newspaper for censorship.

Every newspaper today is required to carry in print the name of the printer, publisher and the editor and this requirement seems to have its origin in the early 19th century. The Marquess of Wellesley, who was engaged in a fight with Tipoo Sultan, could not brook any news being published about the European community in India and laid down rules for the conduct of the whole tribe of editors and threatened to deport the mischievous editors by force to Europe. Regulations were made in 1799 requiring the newspapers to print the names of the printer, publisher and the editor and to submit all material published in the paper for prior scrutiny by the Secretary to the Government. Any breach of the regulations was punishable with deportation from India. But, in fact, the newspapers did not submit to the requirement of precensorship with regularity. On the other hand, in spite of the rigid restrictions there was a spate of pamphlets, some of them emanating from the Missionaries of Serampore attacking Hindu and Muslim beliefs. In Madras, the regulations were more stringent, requiring the Press to submit manuscripts for censorship before publication.

Precensorship came to an end under peculiar circumstances. When asked to exclude certain portions from his newspaper, Heatly, the Editor of *Morning Post*, refused to comply claiming that no action could be taken against him as he was a native of India. Heatly was born of a European father and Indian mother and the Government having realised that it was powerless to take action against one Indian by birth, Lord Hastings abolished censorship and placed the responsibility for excluding any matter likely to affect the authority of the Government or anything injurious to the public interest on the editor himself.

During this period, three men played an important part in establishing freedom of the Press in this country. James Silk Buckingham was an indefatigable fighter for the freedom of the Press and was on several occasions threatened to be deported but was saved by Lord Hastings, who adopted a benevolent attitude towards the Press because he realised that the most effective safeguard for the Government was permitting full freedom of discussion by the Press as this would serve to strengthen the hands of the administration. Despite the strong opposition from his Council and censure from the Court of Directors, Lord Hastings relaxed some of the existing restrictions. Raja Ram Mohan Roy's three papers, which resolutely opposed Hindu social and religious beliefs, were considered as fraught with danger and likely to explode all over India like a spark thrown into a barrel of gunpowder. In official quarters, they were viewed with some apprehension. The newspapers, which favoured orthodox viewpoint however, did not attract the same measure of hostile attention. The tireless campaign by Buckingham and Ram Mohan Roy convinced many eminent minds both in this country and in England of the useful role a free Press could play by its exposure of lapses in the administration and its criticism of the Government's policies.

After the departure of Lord Hastings, the new Governor-General John Adam recorded his objection "to the assumption by an editor of a newspaper of the privilege of sitting in judgment on the acts of Government and bringing public measures and the conduct of public men as well as the conduct of private individuals before the bar of what Mr. Buckingham and his associates miscall "public opinion." He, therefore, issued an ordinance requiring that all matters printed in a press or published thereafter, except matters of a commercial nature, should be printed under licence from the Governor-General. The application for a licence should furnish the name or names of the printer and publisher or the proprietors, their places of residence, location of the press and the title of the newspaper, etc. Where there was a change in any of the particulars enumerated above, a fresh application for licence should be submitted. The Governor-General had the power to revoke the licence. Certain penalties were imposed in cases where the printing or publishing was done without the requisite licence. Regulations issued under this ordinance empowered magistrates to attach and to dispose of both unlicensed printing presses and presses which continued to function after the notice of recall. The presses were also required to carry on the first and last pages the names of the printer, city or town or place of publication and also required that a copy of the paper should be forwarded to the local magistrate on payment. Penalties were imposed for non-compliance with these regulations. It was apparent that these regulations were aimed at the Indian language press of those days. These regulations may be said to be the forerunners of the Vernacular Press Act of 1878.

In the period that followed, both Lord Bentinck and Sir Charles Matcalf adopted a more liberal attitude towards the Press in India. Metcalf advocated the liberty of the Press believing that its benefits outweigh its mischiefs. The unsatisfactory nature of the Press laws agitated the minds of Indians and Sir Charles Metcalf referred the matter to Lord Macaulay to draft a Press Act. Macaulay pointed out that the licensing regulations were indefensible and should be repealed. He expressed the view that licences to print ought not to be refused or withdrawn except under very peculiar circumstances. While agreeing with the views of Lord Macaulay, the Governor-General expressed the view that as the Press Laws differed in the different provinces, the enactment of general law for the whole of India was indispensable. But there were others in the Governor-General's Council who emphasised the importance of the Government keeping a watchful eye particularly on the 'native' Press. However, the Council passed the new Act repealing the Bengal Regulations of 1823 and Bombay Press Regulations of 1825 and 1827. The new Act was made applicable to all the territories of the East India Company and required the printer and publisher to give a declaration about the precise location of the premises of publication. For this change in law, Metcalf had incurred the displeasure of the Court of Directors, but Lord Auckland, who succeeded him, was in no mood to reverse the liberalization policy towards the Indian Press. Under Metcalf's Act of 1835, the Press in India developed rapidly in the three provinces of Bengal, Bombay and Madras, as also in the North-West Provinces (now Uttar Pradesh).

At this stage it is interesting to note the observations made by Edward Thompson on the progress of the Press in India in his study of Metcalf.[1] He said:

"In India Metcalf liberated the Press as Governor-General and it angered the directors and that powerful immovable mass, the retired officials.

"It was not the Indian Press that he liberated but the British Press in India, which existed under a 'cat and mouse' regime in its first days under James A Hicky, in Warren Hastings' time. Physical violence was the main check in its scurrility and irresponsibility. Calcutta society, very tolerant of immorality and indecorum, disliked frank commentary on its doings, and Hicky was frequently assaulted. As the century ended, Lord Wellesley presiding over a great crisis which permitted the intervention of no scruples and complications (luxuries in any case not much in his time) tightened up control. Journalists had leave to write what he approved; if they worked otherwise, they left India. Lord Minto carried the Government's progressively obscure attitude still further. This dread of the free distribution of knowledge became a chronic disease. It was our policy in those days to keep the natives of India in the profoundest possible state of barbarism and darkness, a policy which operated outside the Company's own territory………"

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[1] *The History of Indian National Congress*, Vol. II, B. Pattabhi Sitaramayya, pp. 719.

Lord Ellenborough was faced with a peculiar problem: that of publication by officials of official documents in a newspaper controversy in vindication of their position. The Governor-General directed that "official documents and papers were in no case to be made public or communicated to individuals without the previous consent of the Government to which alone they belong." The Government issued instructions to newspapers prohibiting publication of official orders and deliberations to which they could not have had access except through the good offices of a highly-placed official. The point to note here is that Lord Ellenborough restrained the officials instead of reprimanding the editors for the publication. A controversy arose as to what may be officially communicated to the Press and what should not and also by whom and thus was born the Official Secrets Act. Later the idea of Government official publicity was evolved.

The language newspapers devoted themselves to questions like the sati, caste, widow re-marriage, polygamy, the atrocities of indigo planters and the blunders of young magistrates. The importance of the native Press by then had become very considerable.

What the British call the Sepoys Mutiny of 1857, and referred to by us as our first war of independence, aroused grave apprehensions in the mind of the Government and it felt that sedition had been poured to an audacious extent into the hearts of the people of India. Lord Canning introduced Act XV of 1857 to regulate the establishment of printing presses and to restrain the circulation of printed books and papers in India. An important feature of the law was that it did not draw a line of demarcation between European and Indian publications. The Bill applied to every kind of publication, be it in English or in an Indian language owned by Indians or by Europeans. The Act, it may be noted, reintroduced the main features of the Adam Licensing Regulations of 1823. Under this Act, keeping or using of printing presses without a licence from the Government was prohibited and the Government assumed discretionary powers to grant licences and to revoke them at any time. The Act was applicable to the whole of

India and was limited only for one year. The prohibition imposed was that "no newspaper, etc., shall contain any observations or statements impunging the motives or designs of the British Government either in England or in India or in any way tending to bring the said Government into hatred or contempt, to excite disaffection or unlawful resistance to its orders or to weaken its lawful authority or the authority of its civil or military servants, or observations or statements having a tendency to create alarm or suspicion among the native population of any intended interference by the Government with their religious opinions and observances or having a tendency to weaken the friendship towards the British Government of Native Princes, chiefs............or alliance with it."

The rapid growth of the Indian language press made the Government rather uneasy. The official opinion had hardened towards the language press and the diehards among them stressed the need for a more effective law than that which then existed (namely, Act XXV of 1857, s. 124A of the Indian Penal Code and so on). In the year 1877, the Press Association, headed by Surendranath Bannerjea, waited on the then Viceroy and made a fervent appeal not to impose any stringent restrictions on the language press. The Viceroy in his reply made no reference to the subject. In the following year, the Vernacular Press Act was passed (Act IX of 1878). The salient provisions of this enactment were to place newspapers published in the languages of India under "better control" and to furnish the Government with more effective means than the existing law provided for punishing and suppressing seditious writing. The Vernacular Press Act owed its origin to the pique of the then Lt.-Governor of Bengal, Sir Ashley Eden. The incident leading to the passing of the Act, as described by Motilal Ghose, needs narration in full:

> "Babu Shishir Kumar was at the time a poor man. His position in Calcutta Society was not high. The tempting offer came from the ruler of the province. Many other men in his circumstances would have succumbed to his temptation. But he was made of a different stuff. He resisted and did something more. He thanked His Honour for his generous offer, but also quietly remarked your honour there ought to be at least one honest journalist in the land. The expected result followed. Sir Ashley flew into an unconquerable rage. With scathing sarcasm, he told Babu Shishir Kumar that he had forgotten to whom he was speaking, that as supreme authority in the province he could put him in jail any day he liked for seditious writing in his paper, and

that he would drive him back to Jessore bag and baggage from where he came in six months. It was not a vain threat. The Vernacular Press Act owed its origin to this incident. It was to take his revenge on Babu Shishir Kumar that Sir Ashley Eden persuaded Lord Lytton to pass this monstrous measure at one sitting. The blow was aimed mainly at the *Amrita Bazar Patrika* which was then an Anglo-Vernacular paper and fell within the scope of the Act. But Babu Shishir Kumar and his brothers were too clever for Sir Ashley. Before the Act was put in force, they brought out their paper in wholly English garb and thus circumvented the Act and snapped their fingers at the Lt.-Governor; for, a journal conducted in the English language was beyond the jurisdiction of Lord Lytton's Vernacular Press Act."

The Vernacular Press Act, instead of cowing down the language Press, produced exactly the opposite effect. The general tone of the newspapers was one of opposition to Government and Government measures. This hostile attitude continued till 1880 when Gladstone, who became the Prime Minister, had denounced the Act and gave instructions to repeal the Act.

Writing about the Press in the 19th century India, Dr. Pattabhi Sitaramayya points out that "popular agitation gives birth to repression on the ground that, unless the people are thoroughly beaten, no concession should be made to popular demands. Lord Lytton's Press Act of 1878 which was, however, quickly withdrawn, was the real forerunner of this policy. The Arms Act was another reply to the growing self-consciousness of the nation and continued a festering sore."

In the latter part of the 19th century, the Government of India was haunted by the spectre of sedition. By a notification promulgated on 25th June, 1891, the Government restricted the rights of the free press even in Indian States. The Indian National Congress protested against it in 1891. The notification prohibited the publication of a newspaper within the territory of a Native State without the permission of the Political Agent. If this was contravened, the Political Agent could, by order in writing, require the editor to leave such local area within seven days from the date of such order and prohibit him from re-entering such local area without the written permission of the Political Agent. Disobedience o such an order made one liable to forcible expulsion. Dr. Pattabhi Sitaramayya points out "Sections 124A and 153A were forged in the year 1897 and really created disaffection towards the Government. It is interesting to note that sections 108 and 144 were first applied to politicians even in the last century. Secret Press Committees were established in 1898 which evoked a vehement protest from Mr. W. A. Chambers at the 14th Congress............Kelkar spoke against 'the hateful institution of the Press Committees which are only a thinly veiled Press censorship and, as such, a distinct disgrace to British India." Even more startling was the statement, unearthed by Mr. R. N. Mudholkar in 1897 made by Sir James Fitz James Stephen which was in the following words: "Go to the English newspapers; whatever they say, you may say; that anybody should want to be more offensive than they, is inconceivable."

Mr. S. Natarajan describes the early part of the 20th century as an "amazingly hysterical period which the Press in India passed through." The Anglo-Indian Press was one with the Government in its policies and it went all out to belittle the extremist as well as the moderate schools. Naturally, therefore, the Government did not find any danger in the Anglo-Indian Press. Defiance of the Government and challenging its acts were explained away as "occasional lapses from good taste and right feeling." The *Times of India,* which was pulled up for flagrant contempt of court in the Tilak trial (1897), was let off with a warning. This form of extreme discrimination displayed by the British Government provoked a caustic comment from Gokhale who said: "The terms of race arrogance and contempt in which some of these newspapers constantly speak of Indians, and specially of educated Indians, cut into the mind more than the lash can cut into the flesh. Many of my countrymen imagine that every Anglo-Indian pen that writes in the Press is dipped in Government ink. It is an absurd idea, but it does great harm all the same." Speaking on another occasion, Gokhale went on to expose the system of confidential circulars "which seek to take away in the dark what has been promised again and again in the Acts of Parliament, the proclamations of Sovereigns and the responsible utterances of successive Viceroys" and said that the unlimited power that the Government possessed inclined it constantly to enact repressive legislation. Further, Gokhale's remark that nowhere was the Press so weak in influence as it was in India was borne out by the fact that the Government promulgated an Ordinance and enacted laws to control public meetings (1907) followed by the Newspapers (Incitement to Offences) Act, 1908. By this Act, power was given to a magistrate to seize a printing press if he was convinced that a newspaper printed therein contained any incitement to murder or to an

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act of violence or to an offence under the Explosive Substances Act. Power was conferred on the magistrate to make the conditional order absolute either by an *ex parte* decision in an emergency or after hearing evidence from persons concerned against the order. Police sub-inspectors were to carry out the magistrate's order under warrant and a right of appeal to the High Court lay within 15 days of the order being made absolute. Proceedings under the Act did not save any person from being prosecuted under any other law, and on the order being made absolute, the local Government could annul the declaration by the printer or publisher and prohibit any further declaration in respect of the newspaper or any newspaper which was in substance the same as the prohibited newspaper. The effect of this draconian law was that several newspapers, which expressed sympathy with terrorist activities, ceased publication in 1908. Any hope that the hardships inflicted by the 1908 Act were temporary were shattered when the Indian Press Act was passed in 1910.

The most harsh provisions of the Press Act, 1910, were the requirement of security deposit by every person keeping a printing press and forfeiture of the deposit in all cases where the matter contained in the newspaper had a tendency, directly or indirectly, whether by inference, suggestion, allusion, metaphor, implication or otherwise, to incite to murder or to any offence under the Explosive Substances Act, 1908, or to any act of violence, or to seduce any officer from his allegiance or his duty, to put any person in fear or to cause annoyance to him, to encourage or incite any person to interfere with the administration of the law or with the maintenance of law and order and so on. When the security deposit was forfeited, a person making a fresh declaration was required to deposit a higher amount than the first, and on the third occasion if an offence is alleged, the security deposited, the printing press used for printing the newspaper and all copies of such newspaper were forfeited. No newspaper printed and published in India could be transmitted by post unless the printer and publisher had made a declaration required under s. 5 of the Press and Registration of Books Act, 1867, and the publisher had deposited security when so required under this Act. When a postmaster suspected that any article other than a letter or parcel contained the prohibited matter he could detain that article in the course of transmission. Two copies of the newspaper were required to be supplied to the Government free of cost.

Enlightened public opinion was very much against the harsh provisions of the Press Act of 1910 from the very beginning.

Gopal Krishna Gokhale and R. N. Mudholkar (my father), who were members of the select committee of the Legislative Council, in a separate note of dissent had expressed their deep misgivings on the working of the Act. They pointed out that the then existing law was sufficient to punish actual sedition as also to deal effectively with incitement to violence. Even assuming that a special legislation of the kind was required to be passed, it should not form part of the permanent statute book of the country. They further pointed out that some of the provisions of the Bill were far too drastic and go beyond the requirements of the situation. Speaking about the security deposit required to be made by a keeper of a printing press, they pointed out that ordinarily no security should be required, but the magistrate may be empowered to demand the deposit of a security in cases in which in his opinon there were reasonable grounds to believe that the press or the newspaper was intended or was likely to be used for any of the purposes described in the Act. This would prevent an unnecessary financial burden (which in the case of small concerns might prove a serious burden) being imposed on well-intentioned printers and publishers.[1a]

The 1910 Act had become a festering sore affecting the Indian Press. After the bomb attack on Lord Hardinge in 1912 from which he narrowly escaped, the provisions of the Act, which were already draconian in nature, were still further tightened. Fresh declarations were demanded for various minor causes, such as change of premises, temporary absence of the printer or the publisher, death of the original owner and change in the management. This led in turn to an insistent demand for the repeal of the Press Act.

The far-reaching effect of the provisions of this Act and notorious instance of misuse of the Act could be seen from the case of Mohamed Ali. A pamphlet published by him under the title of "Come over into Macedonia and help us" was forfeited without the notification stating the grounds for the Government's opinion which was a requirement under the 1910 Act. The Calcutta High Court held that it was not seditious and that it was outside the scope of the Penal Code. The Chief Justice of the Calcutta High Court then observed that it would be the duty of the court to hold, but for s. 22, that there had been no legal forfeiture. The learned Chief Justice further observed:

[1a] *Roy's Law relating to Press & Sedition*—"Later events have amply proved that the onerous provision relating to security deposit proved fatal to the growth of the Press in India and many an editor, printer and publisher had gone to jail or became bankrupt."

"Much that is regarded as standard literature might undoubtedly be caught. The Advocate-General has contended, and rightly in my opinion, that the provisions of the Press Act extend far beyond the Criminal Law and he has argued that the burden of proof is cast on the applicant, so that however meritorious the pamphlet may be, still if the applicant cannot establish the neagtive, the Act requires his application must fail. And what is this negative? It is not enough for the applicant to show that the words of the pamphlet are not likely to being into hatred or contempt any class or section of His Majesty's subjects in British India or that they have not a tendency in fact to bring about that result. But he must go further and show that it is impossible for them to have that tendency either directly or indirectly, and whether by way of inference, suggestion, allusion, metaphor or implication. Nor is that all. The legislature has added the all-embracing phrase "or otherwise".[2] Again, in the case of *New India* edited by Mrs. Besant, the Madras High Court remarked: "Section 3(1) imposes a serious disability on persons desiring to keep printing presses." A deputation of the Press Association headed by Mr. Horniman waited on Lord Chelmsford, the Viceroy, on 5th March, 1917, to impress upon him the harsh nature of the law and he rebuked the deputation in unmeasured terms. He said: "The function of a Judge is not to say what the law ought to be, but what it is. Executive action is and must always be based upon information, experience, considerations of policy which find no place in the courts of law. Sir Lawrence Jenkins was not entirely consistent with himself. And I cannot but think that if he had any knowledge of the statistics I have given you, he would have hesitated before describing the keeping of printing presses and the publication of newspapers as an extremely hazardous undertaking."

Lord Chelmsford used the Press Act with severity and too often. Mrs. Besant was prohibited from entering the Bombay Presidency by Lord Willingdon under the Defence of India Act. In Bengal, the number of young men interned ran up to nearly three thousand. The Congress urged the Government to repeal immediately the Defence of India Act, the Press Act, the Seditious Meetings Act, the Criminal Law Amendment Act and similar other repressive measures.

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[2] In re: *Mahomed Ali*, I.L.R. 41 Cal. 466 (S.B.): A.I.R. 1914 Cal. 242 (S.B.)

The Criminal Law Amendment Act, 1913, and the Defence of India Regulations, which came into force at the outbreak of war in 1914, were used to stifle criticism and silence agitation. The amount collected by the Government by way of securities and forfeitures, most of them by executive orders, the number of presses closed and the publications proscribed under the Act would clearly show under what trying conditions the Press functioned and to what extent it was crippled. The numerous protests proved to be of no avail. Immediately on the heels of these repressive measures came the legislation based on the recommendations of the Rowlatt Committee. The agitation, which followed the passing of these laws, took the form of reading publicly, copying and distributing proscribed literature openly and courting punishment. Horniman was deported. Later, however, he was permitted to resume publication but under censorship with security deposit of a few thousands of rupees.

The position had become, by then, intolerable. A Press Laws Committee was appointed under the chairmanship of Sir Tej Bahadur Sapru in 1921. The journalists deposed before the committee that an Anglo-Indian editor in Madras was allowed to make the most violent attacks on Indians who advocated the reforms that are now law. But if an Indian paper replied to the attack, it found itself accused of exciting hatred. The Sapru Committee recommended the repeal of the 1908 and 1910 Acts, the amendment of the Registration of the Press and Books Act, to empower seizure of seditious literature, to ensure the printing of the editor's name in every issue of a newspaper and to reduce the maximum penalty of imprisonment to six months. The committee said that the two Acts had done little to check the evils they were meant to restrain for the "more direct and violent forms of sedition are now dissiminated more from the platform and through the agency of itinerant propagandists than by the Press."

Next in importance is the Indian Press (Emergency Powers) Act, 1931, which was described as an Act to provide against the publication of matter inciting to or encouraging murder or violence. The sweeping nature of s. 4 of this Act may be noticed from the fact that it provided that whenever it appears to the Government that any printing press in respect of which any security had been ordered to be deposited under s. 3 was used for the purpose of printing or publishing any newspaper, etc., containing any words, signs or visible representations which (i) incite to or encourage, or tend to incite to or to encourage, the commission of any offence of murder or any cognizable offence involving violence or (ii) directly or indirectly express approval or admiration of any such offence or of any person, real or fictitious, who has committed or is alleged or represented to have committed any such offence, the Local Government may forfeit the security or, where no security has been deposited, declare the press to be forfeited. On the second occasion, the security to be deposited by the Press could be up to ten thousand rupees. Power was also conferred on the Postal and Customs authorities to seize articles in course of transmission if they are suspected to contain matter of the nature described above.

Press (Special Powers) Act, 1947.

The long title of the Press (Special Powers) Act, 1947, says that it is an Act to continue certain special powers conferred on the administration for the better control of the dissimination of undesirable matter. The Act was made applicable to Chief Commissioners' Provinces and was in force up to December, 1949.

By s. 4 of the Act power was conferred on the Provincial Government to prohibit or regulate the printing or publication in any document or in a particular issue of a newspaper or periodical of any matter which tends directly or indirectly to promote feelings of enmity or hatred between different classes of His Majesty's subjects. It also empowered Provincial Governments to require any document or class of subjects to be submitted for scrutiny to a specified officer before publication. If the officer is satisfied that such document or a portion thereof is or contains matter of the nature described above, either prohibit its publication or allow its publication with such modifications as he may deem necessary. Section 5 empowered the Government to prohibit or regulate the entry into or sale or distribution or circulation or publication or possession within the province of any document printed or made outside the province. Power was conferred by s. 6 to forfeit a newspaper or other document and after forfeiture the police officer may seize such copies wherever found. For taking preventive action power was given to prohibit printing or publication of any newspaper that may be named. Dissimination of prohibited document was made punishable. Power was conferred to search any place where there is reason to believe that any offence punishable under the Act was about to be committed.

Press (Objectionable matter) Act, 1951.

Section 2 of this Act provided that whoever by words, either spoken or written, or by signs, questions the territorial integrity or frontiers of India in a manner which is, or is likely to be, prejudicial to the interests of sovereignty or security of India was made punishable with imprisonment for a term which may extend to three years or with fine or both. Section 3 enacts that if the Central Government considers that in the interests of the safety or security of India or in the public interest it is necessary or expedient so to do, it may declare an area adjoining the frontiers of India to be a notified area and thereupon so long as the notification is in force such area shall be notified area and whoever makes, publishes or circulates in any notified area any statement or report which is or likely to be prejudicial to the maintenance of public order or essential supplies or services in such area or to the interests of the safety or security of India shall be punishable with fine, etc. This Act expired in 1956 and was replaced by the Criminal Law (Amendment) Act, 1961.

It is somewhat a sad fact that there is such paucity of readily available historical material on the Press in India, although the Indian Press, both English as well as vernacular, had played a leading part in the affairs of the country for over a century. From the meagre material available to me and at my disposal, I have tried to place before this learned audience the trials and tribulations that the Press faced in this country at the hands of the British rulers. We have also seen how arbitrary the governmental action had been and how intolerant the officialdom had been towards the newspapers. I have laid particular emphasis on the Vernacular Press Act which was nicknamed as the Gagging Act and the Press Act of 1910 both of which were nortorious and sent many a journalist and publisher to jail or turned them bankrupts. At the same time, we must admire their courage and self-sacrifice, as was illustrated from the incident relating to *Amrita Bazar Patrika*, which I have related above. We of the present generation should bow our heads to those great men of the past for securing us the large amount of Press freedom which we are enjoying today.

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ARTICLES 19(i) & 19(ii)

We have seen in the first lecture the importance of freedom of speech and expression in a democratic society. The Constitution of India has given a pride of place to this right in the preamble when it refers to the "freedom of thought and expression" and again in Article 19(1)(a). The Constitution does not speak specifically of freedom of the Press as such, but courts in India have so interpreted the constitutional provisions as to encompass within the expression "freedom of speech and expression" the freedom to publish newspapers without any governmental interference, subject only to the limitations that Parliament can enact under clause (2) of that article.

The first of the cases to come before the Supreme Court after the Constitution came into force was *Romesh Thappar* v. *State of Madras.*[1] Invoking the powers conferred by s. 9(1-A) of the Madras Maintenance of Public Order Act, 1949, the Government of Madras prohibited the entry into or the circulation, sale or distribution in the State of Madras or any part thereof the newspaper entitled "Cross Roads". The notification issued by the Government said that this was done for the purpose of securing public safety and for the maintenance of public order. The question that fell for consideration before the Supreme Court was whether the impugned Act was a law relating to any matter which undermines the security of the State or aims to overthrow the State. The courts struck down the impugned provision on the ground that unless the law restricting freedom of speech and expression is directed solely against undermining the security of the State or at overthrowing it, such law could not fall within the reservation under cl. (2) of Art. 19, even though the restrictions which it sought to impose may have been conceived generally in the interest of public order. It further observed that the impugned law, which authorised imposition of restrictions for the wider purpose of securing public safety or the maintenance of public order, fell outside the scope of authorised restrictions under cl. (2) and was, therefore, void and unconstitutional. This case has thus firmly established that the freedom of speech and expression includes freedom of propagation of ideas and that freedom is ensured by the freedom of circulation. Liberty of circulation is as essential to that freedom as the liberty of publication. The court emphatically pointed out that without circulation the publication would be of little value.

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[1] 1950 S.C.R. 594.

Brij Bhushan v. *State of Delhi*[2] was a case in which the weekly *Organiser* was asked by the Chief Commissioner of Delhi to submit for scrutiny before publication till further orders all communal matter and news and views about Pakistan, including photographs and cartoons. The question, which arose for consideration in the case, was whether the Chief Commissioner of Delhi was competent to pass such an order. "There can be no doubt", said the Supreme Court, "that the imposition of precensorship on a journal is a restriction on the liberty of the Press, which is an essential part of the right of freedom of speech and expression declared by Art. 19(1)(a)." The impugned order was passed by the Chief Commissioner in pursuance of the power conferred by s. 7(1)(e) of the East Punjab Public Safety Act, 1949. The contention that this law was saved by Art. 19(2) was rejected, the court holding that precensorship of a journal fell outside the terms of that provision of the Constitution and, therefore, not only was the order unconstitutional but also that the law under which it was made was void.

Both in "Romesh Thappar" and "Brij Bhushan", the question before the Supreme Court was about the constitutional validity of the Acts rather than the validity of executive action. On an examination of the provisions of the impugned Acts, the Supreme Court held that the terms "public order" and "public safety" cover much wider field than the words "undermines the security of, or tends to overthrow the State" used in the Constitution. Criticism of the Government or exciting disaffection or bad feelings towards it is not to be regarded as a justifying ground for restricting the freedom of expression and of the Press unless it is such as to undermine the security of or is such as to tend to overthrow the State. It was further pointed out that unless a law restricting freedom of speech and expression is directed *solely* against the undermining of the security of the State or the overthrow of it, such law could not fall within the reservations of cl. (2) of Art. 19 although the restrictions which it seeks to impose may have been conceived generally in the interests of public order. According to the majority of the judges in each of these cases, the Constitution had placed in a distinct category those offences against public order which aim at undermining the security of the State or overthrowing it and made their prevention the sole justification for legislative abridgement of freedom of speech and expression. That is to say, nothing less than endangering the foundations of the State or threatening its overthrow could justify curtailment of the right of freedom of speech and expression.

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[2] 1950 S.C.R. 605.

Placing emphasis on the word "solely" in the judgment, some of the High Courts interpreted that the impunged law would be invalid unless it was directed solely against freedom of speech and expression undermining the security of the State or tending to overthrow it.

The next important decision in this respect was the *State of Bihar* v. *Shailabala Devi*[3] in which the Supreme Court has pointed out that the decisions in *Romesh Thappar* and *Brij Bhushan* had been more than once misapplied and misunderstood and have been construed as laying down a wide proposition that restrictions of the nature imposed by s. 4(1)(a) of the Indian Press (Emergency Powers) Act or of a similar character are outside the scope of Art. 19(2) of the Constitution inasmuch as they are conceived generally in the interests of public order. The court observed that it was plain that speeches or expressions on the part of an individual which incite or encourage commission of violent crimes, such as murder, cannot but be matters which would undermine the security of the State and come within the ambit of law sanctioned by Art. 19(2) of the Constitution. Referring to the Madras Maintenance of Public Order Act, 1949, the court said "whatever ends the impunged Act may have been intended to subserve and what aims its framers may have had in view, its application and scope could not, in the absence of delimiting words in the statute itself, be restricted to those aggravated forms of prejudicial activity which are calculated to endanger the security of the State, nor was there any guarantee that those authorised to exercise the powers under the Act would, in using them, discriminate between those who act prejudicially to the security of the State and those who do not."

As a result of these decisions, Art. 19(2) was amended with retrospective effect from 1950. This amendment has introduced not only public order but two other subjects, namely, friendly relations with foreign States and incitement to an offence. In other words, the amendment enlarged the sweep of legislative abridgement of this right. In addition, the word

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[3] 1952 S.C.R. 654.

"reasonable" has been added to permissible legislative restrictions. As a result of this amendment, the restrictions to be imposed must be reasonable, which means that the courts will be entitled to examine whether the restrictions imposed are reasonable or not. The amendment has made the categories enumerated in cl. (2) exhaustive.

The constitutional validity of this amendment seems to have been accepted by our courts, but I expressed a doubt in regard to the power of Parliament under Art. 368 to make such amendment (See *Sajjan Singh* v. *State of Rajasthan*).[4]

In *C. R. Golaknath* v. *State of Punjab*,[5] the majority of the judges of the Supreme Court construed Art. 368 as conferring a restricted power only on Parliament which kept out of the scope of its amending powers the power to alter the basic features of the Constitution such as the Fundamental Rights as enumerated in Part III of the Constitution. Parliament's power to make laws placing restrictions on those rights is expressly limited to that conferred by the different provisions of that Part. This view must be deemed to have been overruled by the majority of judges in *Kesavananda Bharati Sripadagalavau* v. *State of Kerala*.[6] With respect to these judges, I still hold the view that the earlier decision was right and that only a constituent body can alter a basic feature of the Constitution.

An important landmark on this subject is the decision in Sakal Papers case.[7] The question before the Supreme Court in this case was whether the restrictions imposed by the Price Page Schedule Act and Order amounted to any abridgement of the right of a newspaper to freedom of expression. The most important feature of that Act was that it empowered the Central Government to regulate the price of newspapers in relation to their pages and sizes if it is of opinion that it is necessary to do so for the purpose of preventing unfair competition among newspapers and, in particular, those published in Indian languages. Secondly, the Act empowered the Government to regulate the allocation of space to be allowed for advertisement matter. On an examination of the provisions of the Act, the court found that the fixation of minimum price for the number of pages which a newspaper is entitled to publish was obviously not for ensuring a reasonable price to the buyers of newspapers but for expressly cutting down the volume of circulation of some newspapers by making the price so un-

[4] A.I.R. 1965 S.C. 845.

[5] A.I.R. 1967 S.C. 1643.

[6] Writ Petition No. 135 of 1970, etc., judgment dated 24.4.1973.

[7] (1962) 3 S.C.R. 842.

attractively high for the class of readers who regularly subscribe to the paper as is likely to deter it from purchasing such newspapers. A further restriction placed by the Act was that after the schedule came into force it was not open to a newspaper proprietor to charge less than a certain minimum price for it even if he wanted to reduce the number of pages in his newspaper and made the contravention of the provision subject to a penalty. Similarly, whether to publish a supplement and charge separately for it was made dependent on the sweet will and pleasure of the Government. The court held that this would necessarily strike at the root of the independence of the Press and was unconstitutional. The effect of the Act was, as held by the Supreme Court, that a newspaper, which had the right to publish any number of pages for carrying its news and views, would be restrained from doing so except upon the condition that it raised the selling price. This, the court said, would be a direct and immediate effect of the order and, as such, would be violative of the right of newspapers guaranteed by Art. 19(1)(a). Secondly, it was held that s. 3(1) of the Act in so far as it permitted the allocation of space to advertisements directly affected the freedom of circulation for, if the area of advertisement was curtailed, the price of the newspaper would be forced up. If that happened, the circulation would inevitably go down. This was, the court said, not a remote but a direct consequence of curtailment of advertisements. The court came to this conclusion on the ground that a newspaper was a commodity sold below its cost of production so as to meet the ability of its readers to obtain the paper at a price which could be considered to be within the reach of the average reader. This the newspaper could afford to do only with the aid of its advertisement revenue. Earning this revenue was thus an essential element in the economy of newspapers. According to the court, the provisions neither of clause 2 of Art. 19 nor those of clause 2(6) of Art. 19 of the Constitution enabled the State to make a law like the one in question. It is to be seen whether, on the basis of the latest decision of the Supreme Court in *Bennet Coleman Ltd.* v. *Union of India*[8], the State will venture to enact another law like the Price Page Schedule Act and, if it does, whether it will be able to face successfully the gauntlet of the Constitution.

Freedom of speech and expression guaranteed by Art. 19(1)(a) is not an absolute right because cl. (2) of this Article enumerates the restrictions which could be placed upon the exercise of this right. The restrictions placed by the impugned Act in Sakal Papers case could not be justified under any of the grounds enumerated in cl. (2) of Art. 19. Admittedly, the right to propagate one's ideas is inherent in the conception of freedom of speech and expression and for the purpose of propagating his ideas every citizen has the right to publish them, to dissiminate them and to circulate them. He is entitled to do so either by word of mouth or by writing. The right envisaged extends not merely to the matter which he is entitled to circulate but also to the volume of circulation. A citizen is entitled to propagate his views and reach any class and number of readers as he chooses, subject to the limitations permissible to be imposed by law which falls within the ambit of cl. (2) of Art. 19.

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[8] A.I.R. 1973 S.C. 106: 1972(2) S.C.C 788.

The contention of the Government in *Sakal Papers case*[9] was that the impugned Act was passed to prevent unfair competition amongst newspapers and to prevent the rise of monopolistic combines so that newspapers could have fair opportunities of freer discussion. Relying on the Press Commission's report, it was argued that newspapers of long standing, which have built up a large and stable advertisement revenue, being in a more advantageous position than newcomers in the field of journalism, are in a position to squeeze out such newcomers with the result that they were able to destroy the freedom of expression of others. A free press, it was contended, did not mean a press composed of a few powerful combines and that in order to ensure freedom of the Press it is necessary to secure full scope for the fuller development of smaller newspapers. The question, therefore, is whether the restrictions could be placed on the exercise of this right for the purpose of curbing the monopolistic tendencies among newspapers. The Supreme Court held that it was not open to the State to curtail or infringe the right of one for promoting the general welfare of a section or a group unless this action could be justified under a law competent under cl. (2) of Art. 19. The right of freedom of speech cannot be taken away with the object of placing restrictions on the business activities of citizens which cannot be restricted in the interests of the general public. If a law directly affecting it is challenged it is not sufficient to say that the restrictions enacted by it are justifiable under cl. (3) to (6). I have already referred to and dealt with clause 6 of Art. 19(2). Clauses 3 to 5 thereof are not relevant at all and cannot be called in aid to sustain a law like the Price Page Schedule Act. I may add that a citizen is entitled to enjoy each and every one of the freedoms together and cl. (1) does not prefer one freedom to another.

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[9] (1962) 3 S.C.R. 842.

In conclusion, I would only say that the Constitution does not permit placing of restrictions on the right of a citizen (which would include a newspaper) to express his views either by word of mouth or in writing and publish them and no restriction can be placed on it except to the extent permissible under a law falling within cl. 2 of Art. 19 of the Constitution. This is a valuable freedom and if we have to maintain the democratic structure of our Constitution and prevent its being converted into what may be a one-party State, it must be jealously guarded not only by those opposed to the Government of the day but also by the party in power today. This freedom, in its widest amplitude, is essential to each side and I hope a day will not dawn when it will be sacrificed by a party in pursuit of its self-interest. I cannot say what the future holds out for the country but should unfortunately such a day does rise, an almost fatal blow would have been struck at our democratic tradition.

In *Kedarnath Singh* v. *State of Bihar*,[10] the constitutional validity of s. 124A, I.P.C., which makes sedition an offence was questioned. After reviewing the case law on the subject and bearing in mind the rules of construction, the Supreme Court came to the conclusion that either of the two opposing views, that is, the view taken by the Privy Council in *Balgangadhar Tilak's case*[11] or that taken by the Federal Court in *Nihrendu Dutt Majumdar* v. *King-Emperor*,[12] could be taken respecting the construction of s. 124-A and could be supported with good reasons. In other words, the court held that two constructions of s. 124-A were possible and following the well-known rule of construction, it chose to accept that construction which made the provision constitutional.

Section 124A penalises words spoken or written as also signs or visible representations which have the effect of bringing or which attempt to bring into hatred or contempt or excites or attempts to excite disaffection towards the Government established by law. The expression "Government established by law" has to be distinguished from the persons for the time being engaged in carrying on the administration. Government established by law is the visible symbol of the

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[10] 1962 Supp. 2 S.C.R. 769..

[11] 25 I.A. 1.

[12] 1942 F.C.R. 38.

State. The very existence of the State will be in jeopardy if the Government established by law is subverted. Hence the continued existence of the Government established by law is an essential condition of the stability of the State. It is for this reason that 'sedition' comes under Chapter VI of the Indian Penal Code relating to offences against the State. Hence, any acts within the meaning of s. 124A which have the effect of subverting the Government by bringing that Government into contempt or hatred, or creating disaffection against it would be within the penal statute.. For, the feeling of disloyalty to the Government established by law or enmity has a natural tendency to promote public disorder by the use of actual violence or incitement to violence. In other words, any written or spoken words, etc., which have implicit in them the idea of subverting government by violent means, which are compendiously included in the term revolution, have been made penal by the section in question. But the section has taken care to indicate clearly that strong words used to express disapprobation of the measures taken by the Government with a view to their improvement or alteration by lawful means would not come within the section. Similarly, comments however strongly worded expressing disapprobation of actions of the Government without exciting those feelings which generate the inclination to cause public disorder by acts of violence would not be penal. In other words, commenting even in strong terms upon the measures or acts of the Government or its agencies so as to ameliorate the condition of the people or to secure the repeal or alteration of those acts or measures by lawful means, that is to say, without inciting those feelings of enmity and disloyalty which imply incitement to public disorder or the use of violence is not the same thing as preaching disloyalty to the Government established by law.

The court further observed that the provisions of the section read as a whole, along with the explanations, make it reasonably clear that the section aims at rendering penal only such activities as are intended to or have a tendency to create disorder or disturbance of public peace by resort to violence. The explanations appended to the main body of the section make it clear that criticism of public measures or comment upon Government action, however strongly worded, would be within reasonable limits and would be consistent with the fundamental right of freedom of speech and expression. It is only when the words, written or spoken, which have the pernicious tendency or intention of creating public disorder or disturbance of law and order, that the law steps in to prevent such activities in the interests of public order. So construed, the section strikes a correct balance between fundamental rights of individuals and the interests of public order.

In *Superintendent of Central Prison, Fatehgarh* v. *Ram Manohar Lohia*,[13] Dr. Lohia was prosecuted for delivering speeches instigating cultivators not to pay enhanced irrigation rates to the Government. It was contended that the impugned section was inconsistent with Art. 19(1)(a) of the Constitution and as such void. The question, therefore, was whether the section embodied reasonable restrictions in the interests of public order and was protected by Art. 19(2) of the Constitution.

After examining the interpretation placed by the Supreme Court on the expression "public order" in its earlier decisions in the cases of *Romesh Thapar*[14] and *Brij Bhushan*[15] and bearing in mind the effect of the first amendment to the Constitution, the Supreme Court observed that in Art. 19(2) the wide concept of "public order" was split up under different heads. The amended cl. (2) enables Parliament to impose reasonable restrictions on the exercise of the right to freedom of speech and expression in the interests of security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. All these grounds, said the Supreme Court, could be brought under the general head "public order" in its most comprehensive sense. But the juxtaposition of the different grounds indicates that they must be intended to exclude each other. Public order is something which is demarcated from the others. In that limited sense, it could be postulated that public order is synonymous with public peace, safety and tranquillity.

A further conclusion reached by the Supreme Court in this case was that any remote or fanciful connection between the impugned Act and public order would not be sufficient to sustain its validity. It was pointed out that in *Virendra* v. *State of Punjab*,[16] the Supreme Court was only making a distinction between an Act which expressly and directly purported to maintain public order and one which did not expressly state the purpose but left it to be implied from its provisions as well as between an Act which directly sought to maintain public order and one which indirectly brought about the same result.

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[13] (1960) 2 S.C.R. 821..

[14] 1950 S.C.R. 594.

[15] 1950 S.C.R. 605

[16] 1958 S.C.R. 308.

The distinction does not ignore the necessity for an intimate connection between the Act complained of and the public order sought to be maintained by the Act.

On the question whether the restriction was reasonable or not, the court pointed out that in order to be reasonable, the restrictions must have a reasonable relation to the object which the legislation seeks to achieve and must not be in excess of that required for attaining the object. The restriction made in the interest of public order must also have reasonable relation to the object to be achieved, that is public order. If the restriction has no proximate relationship with the achievement of public order, it cannot be said that the restriction is a reasonable one within the meaning of the said clause. For the limitation imposed in the interest of pubic order to be a reasonable restriction, it should be one which has a proximate connection or nexus with public order and that it must not be far-fetched, hypothetical or problematical or too remote in the chain of its relation with public order.

Applying the above tests to the facts of Dr. Lohia's case, the court said that under the impugned law even innocuous speeches are prohibited by threat of punishment. There is no proximate or even foreseeable connection between such so-called instigation and public order sought to be protected in the section. Fundamental rights could not be controlled on such hypothetical and imaginary considerations. The conclusion arrived at by the court was that unless there is a proximate connection between the instigation and public order, the restriction is neither reasonable nor is it in the interest of public order. On this ground, the court struck down s. 3 of the Act as infringing the fundamental right guaranteed under Art. 19(1)(a) of the Constitution.

In *Ramjilal Modi* v. *State of U.P.*,[17] the editor, printer and publisher of a newspaper was convicted for publishing an article with the deliberate and malicious intention of outraging the religious feelings of Muslims. There the court had to consider whether s. 295A of the Indian Penal Code could be supported as a law imposing reasonable restrictions on the exercise of the right conferred by Art. 19(1)(a) and is saved by cl. (2) of Art. 19. The contention raised on the appellant's belief was that the law in question had no bearing on the maintenance of public order or traquillity and consequently such a law could not claim protection of cl. (2) of Art. 19 on the ground that it merely places reasonable restrictions on the right of freedom of speech and expression. The court held that right to freedom of religion assured by Arts. 25 and 26 is expressly subject to public order, morality and health. It could not, therefore, be predicated that freedom of religion should have some or no bearing whatever on the maintenance of public order or that a law creating an offence relating to religion could not, under any circumstances, be said to have been enacted in the interest of public order. These two articles in terms contemplate that in the interest of public order restrictions may be imposed on the rights guaranteed. On an examination of the provisions, the court found that cl. (2) of Art. 19 permitted making of a law imposing reasonable restrictions on the exercise of the right to freedom of speech and expression "in the interests of" public order, which is much wider than the expression "for the maintenance of" public order. If, therefore, certain activities have a tendency to cause public disorder, the law penalising such activities as an offence could not but be held to be a law imposing reasonable restrictions "in the interests of public order", although in some cases these activities may not actually lead to a breach of public order. Secondly, s. 295A does not penalise any and every act of insult to or attempt to insult the religion or the religious beliefs of a class of citizens, but it penalises only those acts which are perpetrated with the deliberate and malicious intention of outraging the religious feelings of a class of people. The law penalises only aggravated forms of insults to religion which are perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class, when such insults have a tendency to disturb public order. Therefore, a section which penalises such activities is well within the protection of cl. (2) of Art. 19 as being a law imposing reasonable restrictions on the exercise of the right to freedom of speech and expression guaranteed by Art. 19(1)(a).

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[17] 1957 S.C.R. 860.

One of the questions that fell for consideration in *Virendra* v. *State of Punjab*[18] was whether the State Government was the proper authority to determine whether the circumstances at any given point of time require some restrictions to be placed on the freedom of speech and expression and, in that event, to what extent ? The court answered that it was for the State Government, which was charged with the duty of preserving law and order in the State, to arrive at decision. Therefore, it had to be in possession of all material facts and would be the best authority to investigate the circumstances and assess the urgency of the situation that might arise. It was for it to make up its mind whether any and if so what anticipatory action must be taken for the prevention of the threatened or anticipated breach of the peace. The court is wholly unsuited to gauge the seriousness of the situation inasmuch as it cannot be in possession of materials which are available only to the executive Government. Therefore, the determination of the time and the extent to which restrictions should be imposed on the Press must of necessity be left to the judgment and discretion of the State Government. It was clear that in the above-mentioned case, it appeared that the State Legislature had given wide powers to the State Government or the authority to whom it might delegate them to exercise them only if it were satisfied as to the matters mentioned in the enactment. The conferment of such powers cannot be regarded as anything other than allowing the imposition of permissible and reasonable restrictions on the fundamental right of freedom of speech and expression. Quick decision and swift and effective action must be the essence for the exercise of those powers. Their exercise must, therefore, be left to the subjective satisfaction of the Government charged with the duty to maintain law and order. To make the exercise of the powers justiciable and subject to judicial scrutiny would defeat the very purpose of the enactment. The court further pointed out that even if the officer conceivably abuses the power conferred on him what will be struck down is not the statute but the abuse of power. Further, the fact of the exercise of such power cannot by itself be characterised as unreasonable and outside the protection given by Art. 19(2), the reason being that the exercise of the power is conditioned by the positive requirement of the existence of the satisfaction of the authority as to the necessity for its exercise and is limited to the purposes mentioned in the section. Moreover, the fact remains that the action taken under it is to remain in operation for a limited period only and the action is also liable to be reviewed and is liable to be modified or rescinded upon a representation being made to it.

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[18] 1958 S.C.R. 308.

I may now move on to the Constitution (First Amendment) Act, 1951, and the Constitution (Sixteenth Amendment) Act, 1963, which have given power to the Legislature to impose reasonable restrictions upon the freedom of speech and expression on the following grounds:

Sovereignty and integrity of India
Security of the State,
Friendly relations with foreign States,
Public Order,

Decency or morality
Contempt of court
Defamation and
Incitement to an offence.

The Supreme Court has time and again pointed out that the grounds of restrictions enumerated in clauses (2) to (6) are exhaustive. The result is that any restriction imposed upon the freedom of speech and expression becomes invalid unless it is related to any of the grounds mentioned in cl. (2) of Art. 19. In *Sakal Papers' case*[19], the Supreme Court has definitely held that a ground which is perfectly ligitimate for restricting any of the other freedoms enumerated in cl. (1) of Art. 19 freedom of speech and expression cannot be restricted on any of the grounds specified in cls. (3) to (6). The court said: "It may well be within the power of the State to place in the interests of the general public restrictions upon the right of a citizen to carry on business, but it is not open to the State to achieve this object by directly and immediately curtailing any other freedom of that citizen guaranteed by the Constitution which is not susceptible of abridgement on the same grounds as are set out in cl. (6) of Art. 19. Therefore, the right of freedom of speech cannot be taken away with the object of placing restrictions on the business activities of a citizen...... For, the scheme of Art. 19 is to enumerate the different freedoms separately and then to specify the restrictions to which they may be subject and the object for securing which this could be done. A citizen is entitled to enjoy each and every one of the freedoms together and cl. (1) does not prefer one freedom to another."

The expression "in the interests of" has been introduced by the Constitution (First Amendment) Act, 1951. The effect of introduction of this expression is to widen the scope of the restrictions and to narrow down the ambit of the freedom of speech. As pointed out by the Supreme Court in *Ramjilal's case*[20], the expression "in the interests of" has introduced the tendency test to determine the validity of a restriction under Art. 19.

Let us now see the restrictions in detail.

Sovereignty and integrity of India :

The introduction of this ground of restriction of the freedom of speech and expression by the Sixteenth Amendment Act was necessitated by the unlawful activities of certain organisations in the country. Certain organisations, both in the south as well as in the north, advocated secession and carried on activities which had a tendency to endanger the independence and sovereignty of the country. No agitation of such a nefarious nature can be tolerated by any country and so Parliament has amended the Constitution to nip in the bud any tendency on the part of such organisations which would endanger the sovereignty and integrity of the country.

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[19] (1962) 3 S.C.R. 842..

[20] 1957 S.C.R. 860.

Security of India :

Equally important is the security of India. As pointed out above, no State can tolerate any propaganda by any organisation in the name of freedom of speech and expression any activity which threatens to overthrow the organised governments by means which are unlawful or unconstitutional. Obviously, the security of the State is the very foundation on which any organised government can function. Sections 128 to 138 of the Indian Penal Code e.g., abetment of mutiny, aiding the escape of prisoners of State or of war are examples. Similarly, maintenance of official secrets is essential for the security of the State and is, therefore, a valid ground for restricting the freedom of communication.

Similarly, the Press (Objectionable Matter) Act, 1951, contained restrictions upon publications which incite or encourage any person to resort to violence or speech for the purpose of overthrowing or undermining the Government established by law in India or in any State thereof or its authority in any area. This Act expired in 1956 and in 1961 Parliament has enacted the Criminal Law Amendment Act, 1961 (the detailed provisions of which have been dealt with later in these lectures), which incorporates its provisions.

Section 11 of the Customs Act, 1962, empowers the Central Government to prohibit the import and export of goods if it is satisfied that it is necessary so to do in the interests, among other things, of the maintenance of the security of India and the maintenance of public order and standards of decency or morality.

Friendly relations with foreign States :

This has been added by the Constitution (First Amendment) Act, 1951. Any attempt on the part of the citizens of this country to imperil the peaceful relations with foreign States and which would involve the State in a war with a friendly country should obviously be punished. The Foreign Relations Act, 1932, is one such legislation which would fall within the purview of this provision.

Public Order :

Sub-cl. (1) of cl. (2) of Art. 19 protects an existing law and permits the making of a new law which imposes reasonable restrictions on the right conferred by Art. 19(1) cl. (1) in the interest of public order. From this it would follow that the questions whether the restriction imposed by the law are reasonable or not and whether it is necessary to place them for maintenance of public order would be justiciable.

Decency or morality :

As we have seen, Art. 19 guarantees complete freedom of speech and expression in general, but has carved out certain exceptions in favour of the laws existing at the time of the Constitution as well as laws to be enacted by Parliament. One of the grounds on which a restriction can be imposed is decency or morality. Section 293 of the Indian Penal Code, the constitutional validity of which was questioned in *Ranjit D. Udeshi* v. *The State of Maharashtra* (popularly known as Lady Chatterley Lover's case) was introduced by the Obscene Publications Act, 1925 (VII of 1925), to give effect to an international convention for the suppression of traffic in obscene publications. It cannot be denied that it is an important interest of society to suppress obscenity, though some may not agree on the definition of obscenity. What is obscenity in a particular society in a particular age and in a particular country may not be obscenity in the same society after a lapse of time. What constitutes obscenity depends as much upon the mores of the people as upon the individuals constituting the society. It is always a question of degree. Family planning advocated by Dr. Annie Besant many years ago was scoffed at and she was charged with being obscene, while today it is the subject of free discussion everywhere in the country. Even today there are many individuals who frown upon hearing the word family planning, but in any case it is no longer the dirty word that it used to be. Even so, there are certain things which no progressive society should allow its young men and women to be corrupted by. There are certain exceptions to this general proposition. Pictures and opinions published in a book form with critical text, though in a sense immodest, cannot be considered to be obscene, while the same material used without a critical text would undoubtedly be considered as obscene. What s. 293 of the Indian Penal Code seeks to punish is such "libidinous writings of high erotic effect unredeemed by anything literary or artistic and intended to arouse sexual feelings." (Ranjit Udeshi).

The Indian Penal Code does not define what is obscene but the courts in this country have taken upon themselves the delicate task to distinguish between that which is artistic and that which is obscene. In the process they have by and large accepted the well-known definition of the term by Cockburn C.J. in what is known as the Hicklin test. This is what the learned Judge has said:

> "I think the test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall......it is quite certain that it would suggest to the minds of the young of either sex, or even to persons of more advanced years, thoughts of a most impure and libidinous character."

This test has been uniformly applied in India. While accepting the Hicklin test the court pointed out:

> "The important question is whether this test of obscenity squares with the freedom of speech and expression guaranteed under our Constitution, or it needs to be modified and, if so, in what respects. The first of these questions invites the court to reach a decision on a constitutional issue of a most far-reaching character and we must beware that we may not lean too far away from the guaranteed freedom. The laying down of the true test is not rendered any the easier because art has such varied facets and such individualistic appeals that in the same object the insensitive sees only obscenity because his attention is arrested, not by the general or artistic appeal or message which he cannot comprehend, but by what he can see, and the intellectual sees beauty and art but nothing gross."

While saying this the court has pointed out that "It may, however, be said at once that treating with sex and nudity in art and literature cannot be regarded as evidence of obscenity without something more", thereby keeping artistic works outside the purview of the section. The conclusion reached by the court was that "treating with sex in a manner offensive to public decency and morality......judged of by our national standards and considered likely to pander to lascivious, prurient or sexually precocious minds, must determine the result......" A balance should be maintained between freedom of speech and expression and public decency and morality, but when the latter is substantially transgressed the former must give way. After examining the recent trends of judicial decision in England and America, the court has come to a definite conclusion that "The test to adopt in our country (regard being had to our community mores) is that obscenity without a preponderating social purpose or profit cannot have the constitutional protection of free speech and expression and obscenity is treating with sex in a manner appealing to the carnal side of human nature, or having that tendency. Such a treating with sex is offensive to modesty and decency, but the extent of such appeal in a particular book, etc., are matters for consideration in each individual case."

It may be that there are many critics in this country who attacked this decision of the Supreme Court as following outmoded concepts of morality and obscenity which even the Western countries have discarded long ago. But it is difficult to agree with the critics. As I have earlier pointed out, the mores of a society change from country to country and the so-called highly civilised Western countries are themselves in a quandary while dealing with the problems of sex and obscenity. We have a glorious tradition of our own dating back to several thousands of years and we should not sully it by opening the flood gates of immorality and indecency. The Supreme Court has done well in adopting the Hicklin test and keeping it open for the court to examine each impugned publication.

Defamation :

It is not necessary for me to elaborate at any considerable length the intricacies of defamation. Defamation is a tort. The Indian Penal Code by s. 499 has made it an offence as well. The right of reputation of a person is as much an asset as any other property and any injury to it is as much actionable as an injury to a man's property, tangible or intangible. The test is would the words tend to lower the plaintiff in the estimation of right-thinking members of society in general ? When a defamatory statement is published, it is not only the publisher but also the maker who becomes responsible and it is in that context that the word 'makes' is used in s. 499, I.P.C. It is of the essence that in order to constitute an offence of defamation the impugned matter must be communicated to a third person because what is intended by the imputation is to arouse the hostility of others.

The editor and publisher of a newspaper are responsible for any defamatory matter published in their newspaper, irrespective of the fact whether they have knowledge of the publication or not. There may be exceptions when the editor may disown responsibility, as for example if he proved his *bona fide*. It must, however, be noted that a newspaper has a public duty to ventilate abuses and official failures which go against the public interest. In such cases, the newspaper is well within its right to publish facts, even if they are derogatory to an official, the only care to be taken being to ascertain the relevant facts in a reasonable manner before publishing the matter.

Truth may be a complete defence to an action for defamation. The law will not permit a man to recover damages in respect of an injury to his character which he either does not or cannot be said to possess. Malicious motive of the defendant has nothing to do with the merits of the charge. It is enough if the statement turns out to be true. The second kind of defence is privilege. Privilege is of two kinds: absolute and qualified. Absolute privilege arises in the case of judicial, parliamentary and official privileges. In a charge of defamation against a newspaper the impugned article must be considered in its entirety rather than by separate instances in isolated passages and the Judge must decide what impression would be produced on the mind of an unprejudiced reader.

Section 499 of the Indian Penal Code defines what is defamation. It says that whoever by words, either spoken or intended to be read or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person is said, except in the cases hereinafter excepted, to defame that person. There are four explanations and ten exceptions to the general rule enunciated by the section. The ten exceptions are imputation of truth which public good requires to be made or published, where a newspaper comments on the public conduct of public officials, or where the conduct of any person touching any public question is made, publication of reports of proceedings in courts and Parliament and other legislatures, any comment on the merits of a decided case or conduct of witnesses and others concerned, merits of a public performance, censure passed in good faith by a person having lawful authority over another, accusation preferred in good faith to an authorised person, imputation made in good faith by a person for the protection of his or other's interests and caution intended for the good of the person to whom it is conveyed for public good.

Incitement to an offence :

The Constitution does not define as to what constitutes an offence. The General Clauses Act says that "an offence shall mean any act or omission made punishable by any law for the time being in force." What constitutes an incitement has to be determined by the court with particular reference to the facts of each case. Section 505, I.P.C. provides for the punishment to "abetment" of an offence and ss. 107 and 108 lay down that a person abets the commission of an offence if he instigates any person to commit it.

This concludes the consideration of the First and Sixteenth Amendments to the Constitution.

Before concluding this lecture, I would like to say a few words here about editorial freedom. Press freedom and independence can be truly fostered only by freeing editorial independence from external and internal pressures. Instead, everything that the Government has been saying and doing all these years has, in a way, denigrated the position and status of the editor, as it prefers to discuss the problems of the Press either with working journalists, a T.U. body or the proprietors' organisation......There is no loud or enough journalistic protest against the 'new concept' of freedom of the Press which seeks to penalise dissent and instead demands conformity and "commitment". This rejects Nehru's dictum and the Press Commission's prescription. Democratic society lives and grows by accepting ideas, by experimenting with them and, if necessary, rejecting them. It is necessary, therefore, that as many as possible of these ideas, which its members hold, are truly put before the public.

Government pressures are the greatest menace to editorial independence. Particularly at the State level, these pressures range from withdrawal of advertisements from an "offending" newspaper to physical violence to its editor and reporter, destruction of its property by arson and similar activities of goondas let loose occasionally with the connivance of the police. In the face of such pressures, several papers have been snuffed out of existence.

We have it from a former editor of one of the biggest English language newspapers in the country that despite their loud protests to the contrary the fact remains that most editors correctly gauge or anticipate the wishes of the proprietors of their papers and by toeing their line circumvent the possibility of being handed over explicit instructions to them on policies to be followed in matters of public interest which vitally affect the proprietors. Therefore, while it is undoubtedly essential for the editors and public men to take a firm stand against encroachment on the freedom of expression of a newspaper and its editor, it is no less necessary to adopt an equally firm stand against those proprietors who are replicas of what are known in the U.K. as Press Barons. The Government's attempt to restrain the Press is aimed at ensuring their own stability. The proprietors' attempts at putting fetters on their editors is to facilitate creation of public opinion which will enable them not only to pursue but to expand their commercial activities and make larger and larger profits openly and covertly. This is one of the day-to-day problems which editors have to face. But even so, in our journalistic fraternity, there have been and there should be persons who have 'run the gauntlet' of such constraints and, though occasionally they may have had to change their newspapers, have stuck bravely to the pursuit of an independent editorial policy.

So far as the superior judiciary is concerned, there has been a long tradition of non-interference with the freedom of the Press except where a newspaper was found guilty of contempt of court. There, too, the newspaper is always given an opportunity to defend itself and its explanation is given due weight. If the newspaper has erred and its editor or proprietor admits the error, an apology and promises to be careful in future are usually accepted and the proceedings dropped. Be it also noted that our courts are not unduly sensitive in regard to criticism. But the newspaper report concerning a punitive measure reportedly taken by a Chief Justice of a High Court should cause concern. What had happened was that while addressing a meeting of a Rotary Club, the Chief Justice made some remarks regarding the need for strengthening our national defence in view of potential danger to the country from the activities of certain countries. As a citizen of the country, he was certainly entitled to express his views but he might have been a little careful. The remarks attributed to him coming as they did from one who holds a high office under the Constitution, it could be said that they had a tendency to cause alarm to the common man and, as such, could well have been avoided. But that, however, is not so serious a matter as the sequel to it. The Chief Justice was criticised for making those particular observations in a local language daily. Thereupon, so the report goes, he is said to have issued secret instructions to the subordinate courts not to give any court advertisement to that paper until further orders. On the face of it, such secret instructions are not only discriminatory and unconstitutional but they also amount to a blatant attempt to cow down the newspaper for publishing an article critical of the Chief Justice. No wonder that they caused a furore amongst members of the Parliament ! Quite possible, we may hear more of this in the near future. The learned Chief Justice, a man of undoubted eminence, would have been well advised if he had refrained from taking such a hasty and ill-considered step.

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CONTEMPT OF COURT

"Contempt of Court" is yet another area in which the journalist has to tread warily although the risks involved are not as numerous and hazardous as those in the case of contempt of Parliament. The Contempt of Courts Act, 1971, has not defined what constitutes contempt of court though the earlier laws on the subject attempted to define it. It, therefore, becomes necessary to examine the decisions of courts, Indian as well as English, to ascertain what amounts to contempt of court. They show that Judges observe restraint in dealing with contempts of courts. Because of this, a journalist enjoys considerable freedom in reporting crimes or court proceedings.

When a person shows disrespect towards a court of law or a legislative body or disobeys its orders or interferes with its orderly process, we call it contempt. In a broader and more general sense, it is a power assumed by governmental bodies to coerce co-operation and punish criticism or interference, even of a casual or indirect nature. It is said that the power to punish for contempt was more suited to the kings of England of the 16th and 17th centuries and their style of government rather than to the present. "The law of contempt is not the law of men, it is the law of kings. It is not law which representative legislators responsibly reflecting the *vox populi* originally wrote, but is rather evolved from the divine law of kings, and its aspects of obedience, co-operation and respect towards Government bodies. Though this is not the only source of power, it is the seed from which the power grew, if later adopted and cultivated by men not averse to its exercise. Later institutions agreeably adopted it, less as adjuncts to the kings than to protect their own dignity and supremacy."[1]

It had its origin in the age of divinely ordained Stuart monarchs, when the kings claimed complete sovereign and legal powers answerable to God alone! Resistance to the king was a sin which would bring damnation. In the struggle between the king and Parliament in later centuries, the sovereign powers of the king passed on to Parliament. But the Judges acted for the king and their exercise of powers in relation to contempt had its origin in a presumed contempt of the king's authority. When a king's subject showed disobedience to his officers or disobeyed a writ issued by the king's courts, he was regarded as violating the peace and flouting the king. Though the king acted through the judges, in a mystical way he was presumed to be present and subject to being condemned.

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[1] Ronald L. Goldfarb in *The Contempt Power.*

To every court of justice this power to commit a person for contempt has become a necessary incident. When a person is found to have committed contempt in the face of it, the court could fine him or send him to prison. Though under the common law, disobedience to the King's writ was considered as contempt, in later centuries the courts used the king's seal to make their process effective. We, therefore, find that what in the early stages was regarded as contempt of the Sovereign Lord, became contempt of the administration of justice in later centuries. Another development in the law of contempt of court was that just as disobedience to the orders of a court was considered as contempt so, too, libelling a judge in his judicial capacity came to be regarded similarly and became equally punishable. "By our Constitution, the King is the fountain of justice and he delegates the power to the Judges......arraignment of the justice of the judges is arraigning the king's peace......it is an impeachment of his wisdom in the choice of his judges......it excites dissatisfaction with judicial determinations and indisposes the minds of people to obey them......this is a most fatal obstruction of justice and calls for a more immediate redress than any other." What seems to be the basis of this theory is the need to keep a blaze of glory around the court so that it would never appear to be contemptible in the eyes of the public.

Oswald, one of the oldest authorities on contempt, defines contempt in these terms:

> "To speak generally, contempt of court may be said to be constituted by any conduct that tends to bring the authority and administration of the law into disrespect or disregard or to interfere with or prejudice parties litigant or their witnesses during the litigation."

Every citizen going to a court of law is entitled to a fair and impartial justice, that is, a fair trial free from any kind of prejudice. In order to make justice effective, it is necessary to ensure that there is a fair trial of the cases coming before a court of law. The time-honoured principle of natural justice that no man shall be a judge in his own cause is one of them. There are also various other acts which may vitiate a fair trial, as for example, conduct and publications which may have the effect of suborning witnesses; publication in newspapers comments on a pending case which may prejudice a fair trial and so on. In such cases the law of contempt steps in and uses its sanction against any acts, be they by word of mouth or by publication, which have a tendency to cause prejudice to a fair trial. In a country like England, where the jury system prevails in a large number of cases, it is said that the jurors are more susceptible to be influenced by prejudicial statements or comments than professional judges. The law of contempt of court is, thus, of special importance in furthering fairness of a trial by jury. This is not to say that in our country it plays a less important part. The emphasis in this respect in India is, as in England, on the need to see that the faith of the people in the proper administration of justice and in the authority of the law is fostered. Superior courts enjoy and exercise summary jurisdiction for the purpose of preventing interference with the course of justice and for maintaining the authority of law as administered in the courts. In other words, the object of contempt proceedings is not to afford protection to judges personally from imputations to which they may be exposed as individuals but is intended to be a protection to the public whose interests would be very much affected if by the act or conduct of any party, the authority of the court is lowered and the sense of confidence which people have in the administration of justice is weakened.[2] The purpose of the law of contempt is to clothe the court with necessary sanctions against scurrilous allegations, as for instance, that a judge or court is biased or is doing or omitting to do anything which would prejudicially affect a fair trial.

The law of contempt of court is "essential to the maintenance, and indeed to the very existence, of the legal system of any State that the court should have ample powers to enforce its orders and to protect itself from abuse of itself or its procedure."

Contempt may be either civil contempt or criminal contempt and what is criminal contempt is explained in the Contempt of Courts Act.[3] According to the relevant clause, "criminal contempt" means the publication (whether by words, spoken or written or by signs, or by visible representations or otherwise) of any matter or the doing of any other act whatsoever which (i) scandalises or tends to scandalise or lowers or tends to lower the authority of any court or (ii) prejudices or interferes or tends to interfere with the due course of any judicial proceedings, or (iii) interferes or tends to interfere with or obstructs or tends to obstruct the administration of justice in any other manner.

The terminology used in the definition of "contempt of court" is borrowed from the English law of contempt and embodies the concepts which are familiar to that law which, by and large, was applied in India. The expressions "scandalises", "lowering the authority of the court", "interferes", "obstructs" and "administration of justice" have all gone into the legal currency of this country and have to be understood in the sense in which they have been so far understood by our courts with the aid of the English law where necessary.

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[2] *Brahma Prakash Sharma* v. *State of U.P.*, 1953 S.C.R. 1169.

[3] Section 2(c).

Halsbury's Laws of England[4] explains that contempt by speech or writing may be by scandalising the court itself or by abusing parties to actions or by prejudicing mankind in favour of or against a party before the cause is heard, because, in the latter instances, injurious misrepresentations concerning parties may cause a party to discontinue the action brought by it or to compromise it or may deter other persons with good causes of action from coming to the court. Any act done or writing published which is calculated to bring a court or a judge into contempt or to lower his authority or to interfere with the due course of justice or the lawful process of the court, is a contempt of court. It further explains that any episode in the administration of justice may, however, be publicly or privately criticised, provided that the criticism is fair and temperate and made in good faith[5]. The absence of any intention to refer to a court is a material point in favour of a person alleged to be in contempt.

When a scandalous attack is made upon a judge the cantemner is punished upon the principle that such attacks are against the public, not the judge, and are an obstruction to public justice. A libel on a judge, in order to constitute a contempt of court, must have been calculated to cause such an obstruction.[6] The scandalising might manifest itself in various ways, but in substance it is an attack on individual judges or the court as a whole with or without reference to a particular case, casting unwarranted and defamatory aspersions upon the character or ability of the judges. Such conduct is punished as contempt for the reason that it tends to create distrust in the popular mind and to impair the confidence of the people in the courts which are of prime importance to the litigants in the protection of their rights and liberties.[7] But temperate criticism in good faith is immune from punishment. The punishment is inflicted not for the purpose of protecting either the court as a whole or the individual judges of the court from a repetition of the attack, but of protecting the public and especially those who either voluntarily or by compulsion are subject to the jurisdiction of the court, from the mischief that will ensue if the authority of the tribunal is undermined or impaired.[8]

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[4] Halsbury's *Laws of England*, 3rd edn., vol. 8, para 8.

[5] *Ambard* v. *A.G. for Trinidad and Tobage*, 1936 A.C. 322 P.C.

[6] Re. *Special Reference from Bahama Islands*, 1893 A.C. 138 (P.C.).

[7] *Brahma Prakash Sharma* v. *State of U.P.*, 1953 S.C.R. 1169.

Courts in England have always taken the view that the right of the Press to comment on any matter of general public interest as long as the comment is fair is a matter of very great public interest. It is said that it is of the highest importance to the public that the Press should be as unrestricted as possible. It is this freedom which gives life and vigour to newspapers and enables them to perform their duty to the public satisfactorily.

Reports by newspapers of proceedings in a court of law do not normally amount to contempt. This is on the principle that not only should courts do justice between the parties before it but should also appear in the public eye to be doing so. In a sense the publication by newspapers of those proceedings is no more than enlarging the area of the court and thus enabling those members of the public, who do not or have not been present in court, to know how they were conducted. To this general principle there is, however, an exception. That is when the proceedings are held, in the public interest, *in camera*. In such a case, a newspaper publishing such proceedings runs the risk of being proceeded against for contempt.

Fair and accurate reports are not contempt. A misreport may amount to contempt depending on the circumstances of the case, as for example, if it can be shown that further proceedings are likely to be prejudiced by the publication of the procedings. In the normal course, publication does not amount to contempt *per se*.

The right of a newspaper to comment on the proceedings, however, stands on a different footing. It is not an unlimited right and is subject to cetrain restrictions. Comments which are calculated to impede the course of justice are not permissible. The Press must not be used in a manner which would prejudice the proper trial of cases by courts in the country. Administration of justice is of paramount concern and takes priority over freedom of the Press. This is not to say that courts will lightly interfere with the freedom of the Press. They are sparing in the use of this power and would resort to it only as an extreme measure necessary for protecting the rights of the parties before it.

In cases where a contempt of court is alleged, courts would not ordinarily interfere unless it is shown that there is a "real risk as opposed to a remote possibility that the article was calculated to prejudice a fair hearing."[9] "The test must always be, whether or not in the circumstances of the particular case what has happened is something which is likely to prejudice the fair trial of the action, and the risk that it will prejudice the fair trial of the action must be a real risk."[10]

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[8] *R. v. Davies*, (1906) 1 K. B. 32 at 40.

As already observed, it is contempt of court for any newspaper to comment on pending legal proceedings in any manner which is likely to prejudice the fair trial of the action. The prejudice may arise in various ways. If the comment is one which is likely in some way or other to bring pressure to bear upon one or other of the parties to the action in a manner which would prevent that party from prosecuting or from defending the action or encourage that party to submit to terms of compromise which he otherwise might not have been prepared to entertain, or influence him in some other way in his conduct in the action, which he ought to be left free to prosecute or to defend without being subject to such pressures, the comment will amount to contempt. If the publication is likely to interfere with the proper adducing of evidence in the case either by discouraging witnesses from coming forward or by influencing them in some other way in as to the kind of evidence that they may give or by saying something which may make the jury approach the case without a completely open mind, will also amount to contempt. Where, however, a case is being tried by a judge without the aid of a jury, courts would not lightly interfere even if the publication has a tendency to influence the mind of a judge on the ground that professional judges are sufficiently well equipped by their training to be on their guard against allowing such matters as this to influence them in deciding the case.

The reason why a court will intervene to prevent and punish the publication of false or erroneous information about a case before it is heard and the hearing is completed is obvious. The dissemination of such information about a case is liable to result in prejudice to the parties to the proceedings or to either of them. There cannot be anything of greater consequence than to keep the stream of justice clear and pure so that parties may proceed with safety both to themselves and their characters.

Courts, both in England and India, are aware that the power they have in relation to contempt of court is arbitrary and has to be exercised with care. The jurisdiction being practically arbitrary and unlimited, it should be most carefully watched and exercised with the greatest reluctance. Before exercising it the judges should be satisfied that there is no other mode available to them which is not open to the objection of arbitrariness.[11]

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[9] Per Lord Parker in *R.* v. *Duffy ex parte Nash*, (1960) 2 All E.R. 891 at 896.

[10] *Vine Products* v. *Green*, (1966) 1 Ch. 484 at 498.

Time and again courts have warned themselves that the summary jurisdiction which they exercise in regard to contempt matters has to be exercised with scrupulous care and only when the case is clear and beyond reasonable doubt. A distinction has been drawn between an attack on the judge and a contempt committed by 'scandalising' the court itself. If the reflection is on the conduct or character of a judge in reference to the discharge of his judicial duties it would not be contempt provided such reflection is made in the exercise of the right of fair and reasonable criticism which every citizen possesses in respect of public acts done by an occupant of the seat of justice. It is not by stifling criticism that confidence in courts can be created. Again, as the Supreme Court has pointed out, that in attacks or comments made on a judge or judges which cast aspersion on their character or are otherwise derogatory to their dignity, care should be taken to distinguish between what is a libel on the judge and what amounts really to contempt of court. The fact that a statement was defamatory so far as the judge was concerned does not necessarily make it a contempt. The resulting position is that a defamatory attack on a judge may be a libel so far as the judge is concerned in which case it would be open to the judge concerned to proceed against the libellor, if he so chooses. If on the other hand it is calculated to interfere with the due course of justice or proper administration of law the contemner is liable to be punished summarily for contempt. One is a wrong done to the judge personally while the other is wrong done to the public. It will be an injury to the public if it tends to create an apprehension in the minds of the people regarding the integrity, ability or fairness of the judge or to deter actual and prospective litigants from placing complete reliance upon the court's administration of justice or if it is likely to create embarrassment in the mind of the judge himself in the discharge of his judicial duties. It is not necessary to prove positively that there had been an actual interference with the administration of justice, but it is enough if it is likely or if it tends in any way to interfere with the proper administration of law.[12]

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[11] In re. *Clements and Costa Rica Republic* v. *Erlanger*, (1876) 46 L.J. Ch. 375, 383.

A fair trial means a trial conducted free from prejudice and in which the court tries the case impartially after considering all the available evidence which has been properly submitted. A person accused of a crime in this country can properly be convicted in a court of justice only upon evidence which is legally admissible and which is adduced at his trial in legal form and shape. When a person has a case before a court of justice he has the right to have the decision founded on the law as the court conceives it to be and the evidence properly adduced before it. Where a newspaper conducts the trial before the court comes to its conclusion these essential requisites are impaired. In England, the courts are particularly sensitive about the trials by newspapers because such trials or publication of any material on a pending case would deprive the court of the power of doing that which is the end for which the court exists. In other words, such trials amount to obstructing the courts in performance of their duty of administering justice in an impartial manner and with reference solely to the facts judicially brought before them.

Though the accused may eventually be found guilty of the offence charged against him, the due course of law and justice is nevertheless perverted and obstructed if those who have to try him are induced to approach the question of his guilt or innocence with minds into which prejudice has been instilled by published assertions of his guilt or which contain imputations against his life and character which under the laws of the land are admissible in evidence. In such cases, the effect of such trials is to reduce the court trying the case to impotence so far as the effectual elimination of prejudice and prepossession is concerned.

Where a newspaper "conducts" a trial, the party before the court is deprived of the right to reply or cross-examine witnesses and there is no question of the rules of evidence being applied. The newspaper usurps the function which properly belong to the court and thus denies the basic right of the individual to have a fair trial.

Journalists would do well to remember that their duty is to report cases and not adjudicate upon them. The process of justice cannot be allowed to be corroded by an attempt to influence the decisions of courts. Preservation of the right to freedom of expression is very important for a free society, but the exercise of this right has to be compatible with the preservation of another freedom no less important like the administration of justice without any interference from outside. When there is a conflict between the administration of justice and the freedom of expression, it is undoubtedly the former which has to have precedence over the latter.

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[12] See *Brahma Prakash Sharma* (supra); *Devi Prasad* v. *King-Emperor*; in re *Special Reference from the Bahama Islands*, 1893 A.C. 138; *B. Ramakrishna Reddy* v. *State of Madras*, 1952 S.C.R. 452 and *C. K. Daphtary* v. *Gupta*, A.I.R. 1971 S.C. 1132: 1971 Cr. L.J. 844.

It is one of the essential principles of administration of justice that trials should be held in open court. When the newspapers publish proceedings of courts, they would constitute a sufficient check against any abuses of the court, where they exist. In such cases the court has to strike a balance between the right of free speech and the right of an individual to have his case fairly tried. Without impairing the freedom of speech courts necessarily favour fair trial. To give an example, it is nothing wrong for a newspaper to report the commission of the crime and the investigations by the police as well as comment on a trial after it was over. For, such report does not interfere with the fair trial of the case.

What is meant by fair trial is that a court trying a case must try it with a degree of complete impartiality on the basis of evidence adduced before the court in accordance with the law of evidence. The court also gives an opportunity to each of the parties to state their respective cases and gives them the right to cross-examine and re-examine witnesses. Anything done which would impair any of these requisites may be said to prejudice a fair trial.

Any act done or writing published calculated to bring a court or a judge of the court into contempt or to lower his authority is a contempt of court. This is characterised as 'scandalising a court or a judge'. Secondly, any act done or writing published calculated to obstruct or interfere with the due course of justice or the lawful process of the courts is contempt of court. The only important qualification to this is that judges and courts are alike open to criticism and if reasonable argument is offered against any judicial act as contrary to law or the public good; courts would not treat that as contempt of court. In the mater of criticism of judges and courts, the liberty of the Press is no greater and no less than the liberty of every citizen of the country.

In the case of publication of a photograph as much as in the case of a narrative, it is the duty of a newspaper to take care to avoid publishing that which is calculated to prejudice a fair trial. To approach the matter in a mood of cynical indifference is obviously wrong. There is a duty to take care lest by the publication of any particular matter, whether in the form of photograph or of printed words, prejudice should be caused to a person about to stand his trial.

It is of course true that it is part of the duty of a newspaper, when a criminal case is pending, to elucidate the facts. But this assumption has certain inherent dangers in it. While the police are pursuing their investigations in silence and with reticence and reserve and are taking care not to say anything which would prejudice the trial of the case, be it from the point of view of the prosecution or the defence, it cannot be said that a newspaper which employs an independent staff of amateur detectives, persons who may be ignorant of the law of evidence, has an unfettered right to publish their findings. This could well interfere with the investigation by the police in performance of their statutory duties. The investigating authorities must be allowed to conduct their investigations unfettered and unembarrassed by newspaper reports. It is, however, open to them to brief newspaper reporters from time to time about the progress made in the matter when they feel that doing so will be in public interest.

As already stated, the Contempt of Courts Act, 1971, does not define what is contempt. It merely explains what is civil and criminal contempt. The legislature has deliberately refrained from defining what is contempt because, obviously, they intended the law to have a long reach and wide sweep which would cover the diverse situations that may arise. It is obviously not possible to lay down any rigid, inflexible or invariable rule which should govern all cases of contempt.

Article 215 has made the High Court a court of record and has invested it with "all the powers of such a court, including the power to punish for contempt of court". A similar power is given to the Supreme Court by Art. 129. Section 10 of the Contempt of Courts Act has clothed the High Court with the same jurisdiction, powers and authority in respect of contempts of courts subordinate to it as it has and as it can exercise in respect of contempts of itself. Where, however, a contempt alleged to have been committed in respect of a court subordinate to it is an offence punishable under the Indian Penal Code, its jurisdiction is barred. Section 11 gives power to the High Court to inquire into or try a contempt of itself or of any court subordinate to it, whether the contempt is alleged to have been committed within or outside the local limits of its jurisdiction and whether the person alleged to be guilty of contempt is within or outside such limits. When the High Court comes to the conclusion that a contempt has been committed, the contemner may be punished with simple imprisonment for a term which may extend to six months or with fine which may extend to two thousand rupees or with both. But if the contemner tenders an apology to the satisfaction of the court, he may be discharged or the punishment awarded may be remitted. In cases where the apology is qualified or conditional, the High Court shall not reject it if the contemner makes it *bona fide* (s. 12). Section 13 in clear terms enjoins upon the court not to impose a sentence for a contempt of court unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere, with the due course of justice. In the case of *Sukhdev Singh* v. *Teja Singh* (A.I.R. 1954 S.C. 186), the Supreme Court has pointed out that contempt belongs to a special class and the jurisdiction is conferred by a special set of laws peculiar to courts of record. The court has, therefore, cautioned that a judge who has been personally attacked should not, as far as possible, hear a contempt matter which concerns him personally. The judges, the court said, should bear in mind the oft-quoted maxim that justice must not only be done but must be seen to be done by all concerned and most particularly by an accused person. He should always be given a feeling of confidence that he will receive a fair, just and impartial trial by judges who have no personal interest or concern in his case. This principle has been given statutory recognition by s. 14(2) when it says that where a person charged with contempt under sub-s. (1) applies, whether orally or in writing, to have the charge against him tried by some Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, and the court is of opinion that it is practicable to do so and that in the interests of proper administration of justice the application should be allowed, it shall cause the matter to be placed, together with a statement of the facts of the case before the Chief Justice for such directions as he may think fit to issue as respects the trial thereof. Sub-section (3) states that it shall not be necessary for the Judge or Judges, in whose presence or hearing the offence is alleged to have been committed, to appear as a witness and the statement placed before the Chief Justice shall be treated as an evidence in the case. In cases of criminal contempt the case should be heard by a bench of not less than two Judges. The remaining sections are not relevant for our purpose.

The jurisdiction to punish for contempt is an inherent jurisdiction possessed by a court of record and is inalienable with its functions of the administration of justice. The various Contempt of Courts Acts passed by the legislatures from time to time culminating in the Act of 1971 deal essentially with courts other than the court of record who trace their jurisdiction to their Charter.

In India, the Parliament seems to have taken a less rigid stand when it enacted certain provisions of the Contempt of Courts Act, 1971. Innocent publication and distribution of matter is not considered as contempt. It says that a person shall not be guilty of contempt of court on the ground that he has published any matter which interferes or tends to interfere with, or obstructs or tends to obstruct, the course of justice in connection with any civil or criminal proceedings pending at the time of publication, if at that time it had no reasonable grounds for believing that the proceeding was pending (sub-s. 1 of s. 3).

For, any publication in connection with any civil or criminal proceeding, which is not pending at the time of publication, is not deemed to constitute a contempt of court (sub-s. 2 of s. 3). Sub-section 3 of that section says that a person shall not be guilty of contempt of court on the ground that he has distributed a publication containing any such matter as is mentioned in sub-section (1) if at the time of distribution he had no reasonable grounds for believing that it contained or was likely to contain any such matter as aforesaid. Certain exceptions are carved out under this sub-section. The explanation to this section says that a judicial proceeding is said to be pending when it is instituted by the filing of a plaint or otherwise in the case of civil proceedings and in the case of criminal proceedings under the Code of Criminal Procedure or any other law where it relates to the commission of an offence, when the charge-sheet or challan is filed, or when the court issues summons or warrant against the accused. In any other case it will be deemed to be pending after the court takes cognizance of the matter to which the judicial proceeding relates. A civil or criminal proceeding is deemed to continue to be pending until it is heard and finally decided. The section further explains that a proceeding will be deemed to be pending in a case where an appeal or revision is competent until the appeal or revision is heard and finally decided or where no appeal or revision is preferred, until the period of limitation prescribed for such appeal or revision has expired. A case which has been heard and finally decided is not to be deemed to be pending merely by reason of the fact that proceedings for the execution of the decree, order or sentence passed therein are pending. Statutory recognition has been given in respect of publication of a fair and accurate report of a judicial proceeding or any stage thereof in s. 4. Such publications are not regarded as contempt of court. In a similar language, section 7 enacts that publication of a fair and accurate report of a judicial proceeding before any court sitting in chambers or *in camera* is not contempt of court except in cases where the publication is contrary to the provisions of any enactment for the time being in force ; where the court on grounds of public policy or in exercise of any power vested in it, expressly prohibits the publication of all information relating to the proceeding or of information of the description which is published ; where the court sits in chambers or *in camara* for reasons connected with public order or the security of the State ; the publication of information relating to those preceedings ; or where the information relates to a secret process, discovery or inspection which is an issue in the proceedings. In the case of publication of a text or a fair and accurate summary of the whole or any part of an order made by a court sitting in chambers or *in camara* also is not contempt unless the court has expressly prohibited the publication thereof on grounds of public policy and such other reasons mentioned above (see s. 7). Any fair comment on the merits of any case which has been heard and finally decided does not constitute a contempt (s. 5). Nor again is it contempt if a statement is made in good faith concerning the presiding officer of any subordinate court (s. 6). The Act does not shut out any other valid defences available to a person in respect of contempt proceedings (s. 8).

This, then, is in substance the position of the law relating to contempt as applicable to the Press in force today in our country.

5

LAW ON THE PRESS

I have placed before this distinguished audience in the previous four lectures the essential features of the freedom of the Press and what it means in a democracy, how the law on the Press has grown in this country from the days of the East India Company to the advent of independence, what constitutional guarantees the Press enjoys and what restrictions with which it has to put up and what contempt of court is and how the Press faces that question.

Apart from the constitutional provisions, there are on the statute book some acts or provisions in different Acts which are of a permanent nature and a few others which are of a transitory nature. The Acts that are permanently on the statute book are not many nor are they in any manner harsh in that they do not place irksome fetters on the free exercise of the right of a newspaper to publish news and views. In this category fall the Official Secrets Act, the Press & Registration of Books Act, the Copyright Act and so on. As we all know, an emergent situation needs a quick and an effective remedy and in this category fall the Criminal Law Amendment Act, 1961, and the Defence of India Act, 1962. These Acts contain some rather harsh provisions and they arm the executive with powers which normally they ought not to be entrusted with. To counteract the rigour of such provisions sufficient safeguards, such as the constitution of Press Advisory Committees, are made in the Acts, without brightening the dark corners or the cryptic provisions of the Acts. This circumstance is likely to weaken the interest of the audience. However, I have tried to intersperse the narration of the provision with something I feel to be worth mentioning. Now we proceed to discuss the important Acts.

Official Secrets Act, 1923 :

A mention must be made of the ever-increasing demand of the newspaper reading public to know the contents of public documents bearing on the multifarious activities of the Government particularly as a result of the findings of the Public Accounts Committees of Parliament. This is not just idle curiosity.

The motivation behind it is different in different political groups. Those opposed to the taking over by the Government of more and more industries and other similar activities and of Government invading fields so far free from Government's intrusion want, perhaps, to show that the Government's management of these activities is not only a failure but has led to a higher cost ratio, while those who want that the Government ought to engage more energetically in activities which are outside the normal functions of a Government want to establish the contrary or at least to suggest improvements in the manner and pattern of their functioning. For being able to do either of these with a show of reason each of them needs more and more information. The varied nature of the present-day State activity has raised new problems. Not all such undertakings are run on proper lines nor are many run with any degree of efficiency. The result is that these undertakings have reservations on the question of publicising their performances or of allowing members of the public to obtain information about their achievements. Because of this, exceptions to the general rule that publicity to governmental activities should be far and wide have been carved out.

We thus find that while on the one hand Governments seek to enlarge the scope of publicity and make it more effective, on the other they try to shun it.

Publicity includes affording to the public access to official documents kept by different governmental authorities. Such documents are kept by all sorts of administrative agencies ranging from Government departments to police officers and courts. Public undertakings are, with a few exceptions such as Railways, run by Government companies which own and manage the different public sector undertakings. It is of course true that private sector companies are not open to as much scrutiny as the public sector companies, yet there is a public interest involved in their management as well. But here we are primarily concerned with the public sector undertakings only.

In many cases the Governments and public authorities are anxious to make the public know what they are doing and welcome the man in the street who wishes to know what is going on inside the departments. The man in the street appears, very often or may be most often, to be a newspaperman. When a newspaper evinces interest in any affair which it considers to be of public importance, it goes all out to gather all information available in public documents and expose any undesirable actions of such authorities.

The underlying principle in giving wide publicity to governmental activities is this. Just as courts are, as a general rule, open to one and all in order that everybody may know how justice is being administered, so is publicity to documents which reflect the activity of the authorities running the public sector undertaking be to those undertakings. If publicity is made use of in a proper manner it would afford enlightenment to the people and give them first-hand knowledge of what steps have been taken or perhaps not taken by the public authorities. This way the decisions of the authorities become accessible as also the background of such decisions, e.g., the facts, arguments and interests behind the decisions, motives on the basis of which the authority has taken its decisions or is going to take one and so on. What I mean by saying "is going to" is that in such cases the authorities are under observation not merely after the event but also even before the decision is taken so that in cases where they are going in wrong directions they could be corrected. A constant vigil by the people over the decision-making processes of public authorities would make them arrive at the decision in an objective and impartial manner.

In this manner the people would be furnished with "food for thought". The public authorities would then be exposed to criticism based on divergent opinions and on knowledge about relevant facts. Publicity is a powerful instrument of control in the hands of anybody who wants to use it. In every step that the authority takes, it would feel that it is under public control and is liable to have its steps discussed and criticised. If publicity is always in the minds of officials it would make them anxious to act in such a manner that they may not be exposed to public criticism. This will make them cautious and perhaps, sometimes also, over-scrupulous, in the result that they would not be exposed to vague suspicions. Again publicity creates an atmosphere of openness and confidence in which the administration has to work. Equally important is the fact that publicity becomes a good weapon in the hands of the opposition. It is an age-old saying that the opposition has its best arsenal in the records of the Government.

When newspapers evince interest in getting some information about an activity of the Government, the object is not necessarily to find material for criticising the Government but could well be to apprise people of what is going on in the administration. But the question is whether the Government is bound to afford the same kind of opportunity to the public or to newspapermen to pry into administrative matters and concerning its sovereign functions as it is expected to do with respect to its non-governmental activities, particularly commercial activities.

Whatever may be the merits of publicity of the activities of the Government in the discharge of its sovereign functions, in practice it would become difficult and sometimes even impossible for the Government to carry on its day-to-day activities unless some protection is afforded to the officials who have to take important decisions on matters of the State. Important State secrets have to be protected from falling into undesirable hands. Too much of openness of governmental activities regardless of what the activity is may ultimately lead to endangering the security of the State and the Government should, therefore, be properly armed to take suitable action in appropriate cases. It is against this background that we must consider the Official Secrets Act enacted in the year 1923. It is an act which consolidates the law relating to official secrets and deals with offences like spying and wrongful communication of secret information. Section 3 of the Act makes it an offence if any person for any purpose prejudicial to the public safety and the interests of the State—(*a*) approaches, inspects, passes over or is in the vicinity of, or enters any prohibited place ; or (*b*) makes any sketch, plan, model, or note which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy ; or (*c*) obtains, collects, records or publishes or communicates to any other person any sketch, plan, model, article or note or document or information which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy. In a prosecution for an offence punishable under s. 3(1) of the Act, with imprisonment for a term which may extend to 14 years, it is not necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the State, and notwithstanding that no such act is proved against him, he may be convicted, if from the circumstances of the case or his conduct or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the State ; and if any sketch, plan, model, article, note, document, or information relating to or used in any prohibited place, or relating to anything in such a place, or any secret official code or pass word is made, obtained, collected, recorded, published or communicated by any person other than a person acting under lawful authority, and from the circumstances of the case or his conduct or his known character as proved it appears that his purpose was a purpose prejudicial to the safety or interests of the State.

Under section 5, which is another important section, it is an offence if any person having in his possession or control any secret official code or pass word or any sketch, plan, model, article, or note, document or information which relates to or is used in a prohibited place or relates to anything in such a place, or which has been made or obtained in contravention of the Act or which has been entrusted in confidence to him by any person holding a governmental office, wilfully communicates the same to any person other than a person to whom he is authorised to communicate or it is his duty to communicate. Further, the section makes it an offence if any person voluntarily receives any secret official code or pass word or any sketch, plan, model, article, note, document or information, knowing or having reasonable ground to believe, at the time when he receives it, that the same has been communicated in contravention of the Official Secrets Act. Any publication by a newspaper of an official secret, whether in the form of a note, document, code or pass word, sketch, plan or model, makes not only the correspondent, editor, printer and publisher, liable to punishment but also every director and officer of the company or corporation with whose knowledge and consent the offence was committed become guilty of a like offence. Undoubtedly, the sweep of this section is very wide. Yet another important section is 14. Under this section powers have been vested in the courts in addition and without prejudice to any powers which a court may possess to exclude all or any portion of the public from any proceeding by the prosecution on the ground that the publication of any evidence to be given or of any statement to be made in the course of the proceedings would be prejudicial to the safety of the State. Obviously, under this provision in cases of the nature mentioned therein, even the newspaper reporters may be excluded from the court proceedings.

There have not been many cases of prosecution under this Act. The only important case seems to be the one which came before the Supreme Court.[1] The accused in that case was a Captain in Indian Army. At the time of his arrest he was employed in the delegation in India of a French company. He and two others were prosecuted, among other things, under ss. 3 and 5 of the Official Secrets Act. They were charged with passing on official secrets to a foreign agency. The High Court allowed the bail application of the accused and when the matter came before the Supreme Court, the Court took a serious view of the offence and said that this was an offence of a very serious kind affecting the safety or the interests of the State and considering the nature of the offence this was not a case where discretion, which undoubtedly vests in the High Court under s. 498, Cr. P.C., should have been exercised in favour of the accused.

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[1] *State* v. *Capt. Jagjit Singh*, A.I.R. 1962 S.C. 253.

The highest court in the land thus upheld the stringent provisions of the Act. The Act is a special Act and was enacted for a special purpose. That purpose is no other than protecting the security of the State. Can any one cavil against such a law ?

The Press & Registration of Books Act, 1867 :

The long title of this Act says that it is an Act for the regulation of printing presses and newspapers for the preservation of copies of books and newspapers printed in India and for the registration of such books and newspapers. The term "paper" has been defined to mean any document, including a newspaper, other than a book. Every book or paper printed in India has to print legibly on it the name of the printer and the place of printing and the name of the publisher and the place of publication (s. 3). A person in possession of a press is required to make a declaration as prescribed in the Act (s. 4). Every copy of a newspaper shall contain the names of the owner and editor thereof printed clearly on such copy and also the date of its publication and the printer and publisher of a newspaper are required to make a declaration before a Magistrate (s. 5). Section 7 of this Act enacts an important provision in that it says that in any legal proceeding the editor, a copy of the newspaper containing his name printed on it as that of the editor, shall be held (unless the contrary be proved) to be sufficient evidence, as against the person whose name shall be subscribed to such declaration that the said person was printer or publisher, etc., of every portion of every newspaper. In *D. P. Mishra* v. *K. N. Sharma*,[2] which was a case under the Representation of People Act, 1951, an interesting question under the Press & Registration of Books Act came up for consideration. The allegation was that Mr. Mishra had prepared the offending matter which was published in the *Mahakoshal* of which the Chief Editor was Mr. Shukla and read it over to Mr. Shukla and handed it over to him for publication and the same was published in the paper. It was also alleged that Mr. Shukla being an agent of Mr. Mishra, the publication amounted to corrupt practice under the Representation of People Act, 1951. Apart from this allegation, it was said that the matter published in the paper was in relation to the personal character and conduct of the respondent and in relation to his candidature. The point relevant for consideration here is that Mr. Shukla admitted that the offending matter was published but claimed that it was printed in the newspaper without his knowledge. It was also claimed that he had left the entire management of the newspaper with another person and that he did not learn about the publication till the election petition was filed. It was in this connection that the interpretation of s. 7 of the Press & Registration of Books Act came up for consideration before the Supreme Court. It was held that s. 7 raises a presumption that a person whose name is printed in a copy of the newspaper was the editor of every portion of that issue. The presumption may be rebutted by evidence. In the relevant issues of the newspaper it was printed that Shukla was the Chief Editor and Printer and Publisher. "The presumption under s. 7 undoubtedly arises, but in a charge under s. 123(4) of the Representation of People Act, the presumption under s. 7 of the Press & Registration of Books Act, 1867, would come with greater or less force, according to the circumstances to the aid of a person claiming that the editor was responsible for the publication and that the publication was to the knowledge of the editor." On the facts of this case, it was found by the High Court that Mr. Shukla had appointed another person as editor of the newspaper and that the editor was in exclusive charge of the paper at that time. It was further held that unless there was evidence to prove that Mr. Shukla had either authorised the publication of the offending matter or had undertaken to be responsible for all the publications made in the paper no inference that the offending parts were made to the knowledge and with the consent of the Chief Editor may be raised.

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[2] (1971)3 S.C.R. 257.

The printer of every newspaper is required to deliver to the State Government free of expense two copies of each issue of the newspaper as soon as it is published (s. 11A). Failure to do so will be visited with certain penalties. Part VA, sections 19A to 19L, enjoins on all newspapers to furnish the Registrar of Newspapers the information and statistics enumerated in this chapter.

Sea Customs Act, 1878 :

Section 18(c) of the Sea Customs Act, 1878, prohibits the bringing into India, whether by land, or by sea, "any obscene book, pamphlet, paper, drawing, painting, representation, figure or article." Under s. 19A(2), the Central Government is empowered to make regulations respecting the detention and confiscation of goods the importation of which is prohibited and the conditions, if any, to be fulfilled before such detention and confiscation.

The Young Persons' (Harmful Publications) Act, 1956 :

It is an Act to prevent the dissemination of certain publications harmful to young persons. The Statement of Objects and Reasons says that the dissemination of pictorial and other publications containing stories of glorification of crime, violence and vice is likely to encourage anti-social tendencies among children and exert a harmful influence on young persons. The Act seeks to prohibit the production in India of such literature or any variant and its circulation within India. A harmful publication is defined as "any book, magazine, pamphlet, leaflet, newspaper or other like publication which consists of stories told with the aid of pictures or without the aid of pictures or without the aid of pictures or wholly in pictures being stories portraying wholly or mainly (i) the commission of offences ; or (ii) acts of violence or cruelty ; or (iii) incidents of a repulsive or horrible nature in such a way that the publication as a whole would tend to corrupt a young person into whose hands it might fall, whether by inciting or encouraging him to commit offences or acts of violence or cruelty or in any other manner whatsoever" (s. 2(a)). Section 3 provides for penalties where such harmful publication is sold, distributed, possessed, etc., and empowers the court to order the destruction of all the copies of the harmful publication in respect of which the conviction was had and which are in the custody of the court or remain in the possession or power of the person convicted. Section 4 empowers the State Government in the manner prescribed therein to declare that every copy of such publication forfeited to the Government and when such an order is passed a police officer can seize the same wherever found in the territories to which the Act extends. Section 6 confers on a police officer power to seize and destroy harmful publications.

The Parliament Proceedings (Protection of Publication) Act, 1956 :

This is an Act which was passed by the Parliament to protect the publication of reports of proceedings of Parliament. As I have said elsewhere it is, strictly speaking, an offence to publish the proceedings of Parliament and State Legislatures. To avoid any hardship to the newspapers, this Act was passed to give protection for such publications. Section 3 states that no person shall be liable to any proceedings, civil or criminal, in any court in respect of the publication in a newspaper of a substantially true report of any proceedings of either House of Parliament, unless the publication is proved to have been made with malice. Sub-section 2 of this section says that nothing in sub-section (1) shall be construed as protecting the publication of any matter, the publication of which is not for the public good. The protection afforded by this Act is confined only to the reporting of proceedings of both Houses of Parliament and not to the proceedings of any State Legislature. The only State which appears to have passed such a law is Orissa. Newspaper organisations have been agitating for enactment of a similar law by other States as well.

The Delivery of Books and Newspapers (Public Libraries) Act, 1954 :

This Act defines a newspaper to mean any printed periodical work containing public news or comments on public news published in conformity with the provisions of s. 5 of the Press & Registration of Books Act, 1867. Section 3A enjoins upon the publisher of every newspaper to deliver at his own expense one copy of each issue of such newspaper as soon as it is published to each such public library as may be notified by the Central Government. Contravention of any provision of this Act becomes punishable with fine up to rupees fifty.

Copyright Act, 1957 :

Section 52 of the Copyright Act, 1957, enacts that certain acts shall not constitute an infringement of copyright. Copyright is provided for the purpose of promoting the progressive science and arts. When a person uses the material in which another person has a copyright, may be to the extent of copying, it is not an unlawful use under certain circumstances. Such use is described as "fair use" and one of such fair uses is criticism or review of a book. Fair quotation, extracts from comments and criticism, *bona fide* abridgements and so on are held to be fair and do not infringe the copyright law. What is a fair dealing depends upon the circumstances of each case. When the reproduction amounts to a substantial part of the work it constitutes infringement. On the other hand, if reproduction is only a small part, it does not amount to infrigement. To succeed, the plaintiff must show that the reproduction has been made to an unfair extent, that is, it is of a substantial part of the infringed work. The law permits quotations being taken from a copyrighted work for the purpose of reviewing or criticising it. It is of course true that it is difficult to draw a line of demarcation between the use which for such purposes may be permitted and that which may be forbidden. But if the extracts made are so profuse as to supersede the original work or to such an extent that the review becomes a substitute for the book review such criticism exceeds the limits set by law. The test laid down by courts is whether the matter extracted would materially reduce the demand for the original work. Again, it is an infringement of copyright if the abridgement or any version thereof amounts to adaptation as defined in s. 2(a) of the Act without the consent of the owner. On the other hand, if there is only a brief synopsis given by way of review or criticism, it is a fair use of the copyrighted work.

In so far as newspapers are concerned, s. 52(1)(b)(i) of the Act specifically mentions that there will be no infringement of copyright by a fair dealing with literary, dramatic, musical or artistic work for the purposes of reporting current events in a newspaper, magazine or similar periodical. This provision has obviously been enacted to give an opportunity to newspapermen and critics to extract portions of a work or their summary for the purpose of criticising or reviewing the work or for reporting current events in a newspaper or magazine or by means of photographs. Logically, therefore, when a newspaper publishes articles of another newspaper verbatim without the permission of the author such reproduction would not be justified on the plea of fair dealing. But it does not amount to infringement if the reproduction is of any literary, dramatic or other work in a certified copy made or supplied in accordance with any law for the time being in force (cl. e of s. 52). The underlying idea seems to be that what is done under the authority of the law cannot be the subject of infringement. Clause (n) lays down that it is not infringement of copyright if there is a reproduction in a newspaper, magazine or other periodical of an article on current economic, political, social or religious topic unless the author of such article has expressly reserved to himself the right of such reproduction. Similarly, the publication in a newspaper, magazine or other periodical of a report of a lecture delivered in public does not amount to infringement of the copyright (cl. n). It follows that if the lecture was delivered in private its reproduction would constitute an infringement of copyright. Any matter which has been published in any official Gazette does not amount to infringement, the only exception being the Act of a legislature unless it is published with any commentary thereon (q(i) of s. 52). Sub-clause (iii) of cl. (q) enacts that the report of any committee, commission, council, board or other like body appointed by the Government if such report has been laid on the table of the Legislature unless the reproduction or publication of such report is prohibited by the Government and (iv) any judgment or order of a court, tribunal, or other judicial authority unless the reproduction or publication of such judgment or order is prohibited by the court, tribunal or other judicial authority as the case may be.

The Criminal Law Amendment Act, 1961, prohibits the questioning the territorial integrity or frontiers of India in a manner prejudicial to the interests or safety and security of India. Whoever by words, either spoken or written, or by signs or by visible representation or otherwise, questions the territorial integrity or frontiers of India in a manner which is, or is likely to be, prejudicial to the interests of the safety or security of India, shall be punishable with imprisonment for a term which may extend to three years or with fine or with both (s. 2). If the Central Government considers that in the interests of the safety or security of India or in the public interest, it is necessary or expedient so to do it may declare any area adjoining the frontiers of India to be a notified area (s. 3(a). Sub-s. 2 enacts that whoever makes, publishes or circulates in any notified area any statement, rumour or report which is or is likely to be prejudicial to the maintenance of public order or essential supplies or services in the said area or to the interests of the safety or security of India shall be punishable with imprisonment for a term up to three years and fine. Where any newspaper or any other document wherever printed appears to the State Government to contain any matter the publication of which is punishable under s. 2 or 3(2), the State Government may declare every copy of the issue of the newspaper containing such matter and every of such book or other document to be forfeited to the Government. The term "document" includes any painting, drawing or photograph or other visible representation. The Statement of Objects and Reasons of this Act states that this Act was necessary in view of the developments in the border regions.

Though the provisions of this Act are somewhat sweeping in their nature, the need for enacting such a law cannot be over-emphasised. At the same time it is clear that the State Governments have not used the provisions of this enactment to stifle freedom of speech and expression. It should perhaps be stated to the credit of many State Governments that instead of pressing in aid the provisions of this Act they have, in a large number of cases, lodged complaints with the Press

Council where the procedure is simpler and the disposal of complaints much quicker than in courts. Secondly, newspapers cannot complain that they have been dragged to courts of law for harassing them. Apart from this, the Supreme Court has laid down in Ram Manohar Lohia's case that to be a threat to public order there must be a "proximate connection or nexus to the public order" and one should not read into its consequences considerations which are far-fetched, hypothetical or problematical.

Defence of India Act, 1962 :

Upon the declaration of emergency, the fetter on the power of Parliament to make laws affecting the freedom of the Press disappears and the law made by it cannot be challenged on the ground of legislative incompetence. For as long as the emergency lasts, a citizen cannot claim the protection of Art. 19.

Clause (7) of s. 3 of the Defence of India Act, 1962, deals with matters such as prohibiting the printing or publishing of any newspaper, newssheet or book containing any matter prejudicial to the defence of India and civil defence, public safety, maintenance of public order, efficient conduct of military operations etc. The law enables the Government to demand security from any Press used for the purpose of printing or publishing newspapers as well as to forfeit copies of any newspaper, etc., containing any of the matters referred to above. It also empowers the Government to close down any press or any premises used for the purpose of printing or publishing any newspaper containing any of the matters referred to above as also to prohibit or regulate the use of postal, telegraphic or telephonic services. Cl. 22 of s. 3 permits the Government to take possession of services and intercept or interrupt of postal articles or telegraphic messages in transit as also to regulate the delivery otherwise than by postal or telegraphic service of postal articles and telegrams. Rules made under the Act provide for, among other things, the imposition of censorship of articles, including letters, postcards, newspapers and so on (*see* r. 23).

Section 505 I.P.C. :

This section makes publication or circulation of any statement, rumour or report punishable if it is made with intent to cause or which is likely to cause any officer of the Army, Navy or Air Force to mutiny or otherwise disregard or fail in his duty as such ; or with intent to cause, or which is likely to cause, fear or alarm to the public or to any section of the public whereby any person may be induced to commit an offence against the State or against public tranquillity or with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community.

Section 295A of the Indian Penal Code :

This section provides for punishment for deliberately and maliciously outraging the religious feelings of any class of citizens. In certain sensitive areas of the country are still to be found communal forces which, in the name of Press freedom, frequently make attempts to rouse communal hatred among peaceful neighbours.

Police (Incitement to Disaffection) Act, 1922 :

This Act penalises any act which causes or is likely to cause disaffection towards the Government among the members of the Police Force or which induces or attempts to induce any member of the Police Force to withhold his services or to commit a breach of discipline.

Section 27B of the Post Offices Act :

Under this section, power is given to certain officers of the post office to detain any postal article in the course of transmission by post which any such officer suspects to contain any document of a seditious character.

Section 108 of the Cr. P.C. :

This section empowers the Government to demand security both from private individuals and from those responsible for running, printing and publishing a newspaper if it is found that their intention is to disseminate or abet the dissemination of any matter which is punishable under s. 124A or s. 153A or any matter concerning a judge which amounts to intimidation or defamation. Upon failure to give security demanded by the Government the delinquent would be liable under section 123 Cr. P.C. to be sentenced to undergo imprisonment.

Section 5 of the Telegraph Act, 1885 and s. 26 of the Post Offices Act, 1898, empower any officer of the respective departments to intercept any message or article in the course of transmission and detain it on the occurrence of any public emergency or in the interest of public safety. The emergency contemplated by these provisions is not the same thing as a national emergency contemplated by the Constitution.

These are some of the important provisions of law in force today which empower the executive Government to place constraints on the Press. But the power derived from them is intended to be used only for securing the larger public interest.

Before closing this lecture, I must advert to professional secrecy and the journalist, a question of great practical interest and which has a bearing on the subject on hand. The Indian Evidence Act gives protection to a lawyer who declines to disclose information given to him by his client in certain circumstances. So, too, a communication between husband and wife is placed above enquiry by the courts so long as the marriage subsists. By convention courts do not insist on the priest disclosing any secret information in the possession of clergymen and the same applies to doctors. So, too, journalists are not ordinarily compelled to divulge their sources of information in a court of law. But the fact remains that in our country there is no legal protection to professional secrecy of the Press. Even then normally, a court does not insist on the sources of information being divulged by a journalist unless the case before it is of a grave nature and it becomes necessary to ascertain the sources. Except occasionally we do not find instances in which journalists have been compelled to vivulge their sources of information. The only case I can think of where this was done was that of Mr. A. D. Mani of the *Hilavada* of Nagpur and that was long ago.

In law, the Press does not enjoy a higher legal status than an ordinary citizen. It enjoys the same rights and shares the same duties which any citizen of the country enjoys. Why then should a journalist claim a special privilege and the courts and the Government concede that privilege to him ? One of the reasons is that there is a moral as well as an ethical duty on the journalist to protect the anonymity of his source of information because he obtains that information on the clear understanding that the source would not be divulged. Secondly, a newspaper would not be in a position to obtain and publish information unless its sources of information are well protected. In other words, by securing the information the journalist would be discharging a public duty and by publishing it the Press would be contributing to the public welfare. Thirdly, when an advocate and some other professionals get legal protection why not a newspaper which seeks to serve the public ? Lastly, why should a journalist be required to disclose the sources of information particularly when he takes the responsibility for its authenticity. May be that some governmental agency such as the police may be interested in knowing the sources. What is there to prevent them from obtaining it by making use of vast sources of the State machinery which are at their disposal.

The opposite point of view is expressed by saying that when such a large privilege is granted to the journalist he could publish any sort of information, be it in public interest or otherwise, and get away with it. It is also said that there is not much evidence to show that the Press performs any better function than any other public body and that a court which has a higher duty in the preservation of public interest should be in possession of all relevant information before coming to a conclusion and for this reason alone the Press should not claim a higher privilege before courts of law.

Without doubt, if a journalist publishes some matter *mala fide* or recklessly and it is likely to cause harm or alarm to a person or a group of persons, he will be liable to be hauled up before a court or before the Press Council, depending on the nature of his published report. But where he acts *bona fide*, after checking and cross-checking to the extent possible in the particular circumstances and where his aim is mainly to promote the public good, he cannot be penalised. So far as the courts are concerned, they have to perform an entirely different function, that of adjudication. Except where a journalist or a newspaper tries to infringe on the jurisdiction of a court of law as, for instance, where there is an attempt at "trial by newspaper" of an accused person, their spheres of activity are different. If, however, a newspaper were to undertake comments on a pending case it has to run the gauntlet of contempt of court.

It is true that in law one could argue a case on both sides with reasons which may appeal to some though not to all. However, on balance, it should be noted that the Press should be accorded a special privilege in the matter of professional secrecy. Whether it should be an absolute or conditional one should depend upon the facts of each case. This is not to say that the journalist should be given a place of privilege far and above what the ordinary law of the land permits but either by law or convention the Press should be given enough room to make it possible for it to act in accordance with the standards demanded by the community.

It is a fact that the journalist does enjoy certain special privileges. In the legislatures the journalist has a special enclosure, the Press gallery ; he gets invitations for and is provided with a special place to sit in all important meetings; further he gets priority allotment of a house, gets a telephone connection and so on. These facilities are provided to him because they are essential for enabling him to perform his duties satisfactorily.

The Press undoubtedly performs a function of great public importance when it brings to light great scandals like the jeep scandal, or how a politician has cornered contracts or floated bogus firms to enrich himself and so on. A major function of the Press, therefore, is to expose public evils. Unless the Press is afforded a privilege about the sources of its information, it may be well-nigh impossible for anyone to lay these facts before the journalist. Experience of the past has not shown that non-disclosure of sources of information has in any way caused serious harm to society. It may be that all journalists are not paragons of virtue and there may be some who are prone to cook up something to wreak a private vengeance or bring someone in authority to his knees. Such cases should be dealt with separately, but on principle there is much force in the contention that the Press should be accorded the privilege not to disclose the sources of its information. This, as I said, is not a matter of law but of convention and it should be followed normally.

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PARLIAMENTARY PRIVILEGES AND THE PRESS

"Six hundred talking asses set to make laws and to administer the concerns of the greatest empire the world has ever seen..",[1] said Thomas Carlyle in one of his irritable moments, epitomising the most powerful and the most interesting of the world's legislatures. We are not aware what fate Carlyle met with when he said this, but it is fairly certain that the journalist who dared make such a statement and the newspaper which published it would have been hauled up for contempt of Parliament and the journalist locked up behind bars.

"Parliamentary Privileges" is one of the most sensitive areas in which the journalist has to tread warily. Parliament, it is said, is the keystone in the arch of democracy. Democracy being government "of the people, by the people and for the people", a free Press that contributes to a healthy discussion of problems affecting the people and as to how they might be dealt with is an absolute necessity in a democracy. "Democracy is also a way of life and it must maintain human dignity, equality and the rule of law. It requires strong public opinion, independence and fearlessness in the Press and educated men and women who are not compliant to authority wrongly exercised."[2] If Parliament is to exercise its power of law-making and governing the country effectively, it must have the aid of a free and independent Press, because without it neither the people in the country can know what their representatives are doing nor can Parliament know the trends in public opinion. A member of Parliament addressing the House can be said to be, in effect, addressing the whole country. Similarly, when a group of people meet to express their grievances in public, they too can be said to be, in substance, addressing the Parliament. The work of conveying the views of Parliament to the people and those of the people to Parliament is done by the Press. It is for this reason that it is said that a free Press is as essential a part of democracy as a sovereign Parliament. That is why the Press is regarded as the "fourth estate" in

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[1] Quoted by W. B. Munro in *The Government of Europe*, p. 162.

[2] *Democracy in India and Judicial Review* by M. Hidayatullah, pp. 17, 18 (Lajpat Rai Memorial Lectures, 1963).

Great Britain. In a sense, unless the Press plays its role effectively in publishing proceedings of Parliament—that is, the manner in which laws are made and the discussions that take place before a law is enacted—the role of the legislature would remain obscure. The maxim *ignorantia juris non execusat* is based on the assumption that the Press spreads news as to what the law is and what the citizens' rights and duties are. Thus, the Press acts as a link between the Government, Parliament and the public interpreting each section to the other and, at times, urging its own views on both. Even so, paradoxically the Press, technically speaking, is not free to report Parliamentary proceedings nor make a critical analysis of the functioning of Parliament. The reasons for this is that fear of the breack of privilege of Parliament and of contempt of Parliament always hangs over the heads of journalists like the sword of Damocles.

In all Parliamentary democracies modelled on the British type of democracy, certain privileges of the members of the Assemblies are considered essential for the efficient discharge of their functions. Historically speaking, the King of England claimed all the privileges. They were a part of the King's peace and were enjoyed by his servants who acted in his name. In course of time, the people wrested those rights from the King by claiming them for the House of Commons. The House of Commons, which was a weak and ineffective body during the early Tudor times, gradually strove to put up a fierce and prolonged struggle against the Crown, the House of Lords and the courts during the later centuries. The long-drawn-out struggle between the King and the Parliament was given statutory force in the Bill of Rights which says "the freedom of speech and debates and proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament."[3] The Commons used the privileges against the King in the 17th century and in the next century exercised them against the people themselves somewhat arbitrarily.[4] It was not till the nineteenth century that this struggle ceased and an equilibrium was reached amid rival claims of privileges. Thus privileges, which originated in the special protection of the King, were later claimed by the Commons as customary rights.

What is a privilege is difficult to define, for it has been said that it should be left undefined. It is "an exceptional right or advantage; an exemption from some duty or burden or attendance, to which certain persons are entitled from a supposition of the law that the stations they fill or the offices they are engaged in are such as require all their care and that, therefore, without this indulgence it would be impracticable to execute such office as advantageously as the public good requires"[5], which is "essentially a private advantage in law enjoyed by a person or a class of persons or an association which is not enjoyed by others."[6] It is "the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament and by members of each House individually without which they could not discharge their functions and which exceed those possessed by other bodies or individuals."[7] The weight of authority from early times is not to define what a privilege is. As Blackstone observes: "The dignity and independence of the two Houses are in a great measure preserved by keeping their privileges indefinite."

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[3] Article 9 of the Bill of Rights.

[4] Holdsworth's *History of English Law*, Book 4, Part I.

The powers, privileges and immunities of the House of Commons in England are nowhere defined but are a part of the common law of England and have to be pieced together from numerous precedents. There are a number of privileges which every legislature enjoys, but we are solely concerned with such of those powers and privileges as would impinge upon the freedom of Press. They are (1) freedom of speech in Parliament; (2) right of the House to exclude strangers from the Parliament as also the right to control and regular its own proceedings and the conduct of its members; (3) the right to prohibit publication of its proceedings by a newspaper casting reflections on the speaker or the conduct of members or on the House as a whole or any of its committees and members thereof.

These privileges have been justified on the grounds of "necessity, practice and universal acquiescence."[8] Thus, the protection of the members of Parliament is necessary to enable them to perform their functions without let or hindrance as also for the vindication of the authority and dignity of the House. "The Crown has no rights which it can exercise other than by process of law and through amenable officers; but representative bodies must necessarily vindicate their authority by means of their own; and these means lie in the process of commital for contempt."[9] They are also justified as a legal incident of their legislative authority. The privileges of a legislature would be entirely ineffective for enabling it to discharge its functions, if it had no powers to punish offenders, to impose disciplinary regulations on its members or to enforce obedience to its commands.[10] In order to constitute a contempt of Parliament the impugned attack must relate to a member with respect to his conduct as a member of the House and not to his conduct as an individual.

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[5] Earl Jowitt's *Dictionary of English Law*, edn. 1959, p. 1409.

[6] Viscount Kilmuir.

[7] May's *Parliamentary Practice*, 17th edn. p. 2.

[8] *Stockdale* v. *Hansard* 2 St. Tr. (NS) 861.

Broadly speaking, contempt of Parliament may be described as any act or omission liable to obstruct the House in the exercise of its proper function, as for example, physical or financial intimidation calculated to coerce or penalise members' votes or attitudes, the publication of slanderous or libellous attacks on the House or on any of its members in their capacity as members and so on. A complaint of breach of privilege or contempt may be brought by any member of Parliament and it is then for the Speaker to decide whether or not a *prima facie* case has been made. If he decides that it is, the matter is referred to the Committee of Privileges for further investigation and to report whether or not the complaint merits further action by the House. During these proceedings it is not the practice for the person against whom the complaint has been made to be legally represented, nor is the committee obliged to hear such a person in his own defence. If contempt is proved, the offender may be committed to prison until the end of the Parliamentary session current at the date of the order of commitment. The more usual penalty is to reprimand or administer an admonition. But if the offender is a member of Parliament, the penalty imposed is suspension from the House.

The rights and immunities of the British House of Commons fall into two broad groups. In the first are those rights which are claimed by the House of Commons at the beginning of each Parliament. They are freedom of speech and freedom from arrest as well as other rights and immunities which have come to be recognised as part of the law and custom of Parliament and are thus the law of the land. In the second group fall the rights claimed by the House in its corporate capacity. That is to say, the right to regulate its own proceedings and to exercise penal jurisdiction over contempt of itself. Remedies for the protection of the first class of rights are provided by by the 1935 Act and went beyond them in other respects, lapsed with the commencement of the war. The Indian Independence Act, 1947, kept the door open by giving power to the Dominion Legislature to confer upon itself the privileges which it desired to have.

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[9] The case of *Sheriff of Middlesex*, 113 E.R. 419.

[10] Press Commission Report, p. 422.

When India became independent, the question again became important and was the subject-matter of considerable discussion. When the Constitution was being framed, Sir Alladi Krishnaswami Aiyar and Dr. Ambedkar had assured the Constituent Assembly that the adoption of the powers, privileges and immunities of the British House of Commons was only a temporary provision, because they were pressed for time. The Constitution has made no attempt to describe what these powers, privileges and immunities are, but it simply says that until they are defined by law, they shall be those of the House of Commons of the Parliament of the United Kingdom and of its members and committees at the commencement of the Constitution.

The Constitution gave freedom of speech to members of Parliament and this right is subject only to the provision of the Constitution and the rules and standing orders regulating the procedure of Parliament.[15] Members of Parliament, who speak in the Parliament in exercise of the above right, are not liable to be proceeded against in any court in respect of anything said or any vote given by him in Parliament or any committee thereof. Similarly, any person who publishes any report, paper, vote or proceedings of the Parliament by or under the authority of either House of Parliament is not liable for any civil or criminal action.[16] "In other respects, the powers, privileges and immunities of each House of Parliament and of the members and the committees of each House shall be such as may, from time to time, be defined by Parliament by law." The clause proceeds to add in the latter part that until those powers are so defined by law, they shall be those of the House of Commons and the Parliament of the United Kingdom and of its members and committees at the commencement of the Constitution, that is, 26th January, 1950.[17] The right conferred by this Article is extended not merely to members of Parliament but also to persons who "by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of Parliament or any committee thereof.[18] The provision conferring similar powers, privileges and immunities on members of State legislatures is in identical language.[19]

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[15] Cl. (1) of Art. 105.

[16] Latter part of cl. 2, *ib*

[17] Cl. (3) of Art. 105.

If a newspaper publishes the proceedings of a legislature, even if they are a true and faithful record of the proceedings, it becomes liable for action if it contains statements defamatory of private individuals. The immunity contemplated by cl. (2) of Art. 194 extends only to reports published under the authority of the legislature and not to newspaper reports.

The decision in *Wason* v. *Walter*[20] has established a principle of law that "faithful and fair reports of courts of justice, though the character of individuals may incidentally suffer, are privileged and that for the publication of such reports the publishers are neither criminally nor civilly responsible." This exception to the general law of libel is founded on the principle that "the advantage to the community from publicity being given to the proceedings of courts of justice is so great that the occasional inconvenience to an individual arising from it must yield to the general good." This was a case of Parliamentary privilege, yet the principle of law established by this case has been extended to publication of proceedings of Parliament also. This cannot be done in India. Exception 4 to section 499, Indian Penal Code, provides that "it is not defamation to publish a substantially true report of the proceedings of a court of justice, or the result of any such proceedings." It does not speak of proceedings of Parliament or the legislatures of States. A newspaper publishing the proceedings of Parliament and the legislatures, even if the publication is substantially true and faithful, are not immune from action. It may be that the words were privileged when they were spoken in Parliament or the legislature. But since exception 4 to section 499 does not speak of proceedings of Parliament or legislature a newspaper publishing such report lays itself open to action.[1] Clause (2) of neither Art. 105 nor Art. 194 confers immunity on such publication. The Press Commission has, therefore, recommended insertion of the words "or of Parliament or State Legislature" in exception 4 of section 499, I.P.C. to give protection to newspapers which publish the proceedings of legislatures in good faith.[2] Accepting the recommendation, the Parliament has enacted the Parliamentary Proceedings (Protection of Publication) Act, 1956. The only State which seems to have passed similar law is Orissa. It has enacted the Orissa Legislative Assembly Proceedings (Protection of Publication) Act, 1960. The Administrative Reforms Commission is reported to have suggested that a law similar to the Central law should be enacted in all States.

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[18] Cl. (4 of Art. 105.

[19] Art. 194.

[20] L.R. (1868-69) 4 Q.B. 94.

[1] See the Statement of Objects and Reasons to Act 24 of 1956.

[2] Press Commission Report p. 424.

No liability, civil or criminal, attaches to the publication in a newspaper of a substantially true report of any proceedings of either House of Parliament unless it is proved to have been made with malice.[3] If the publication is for the public good then, too, it is protected.[4] The Act is a sequel to the decision of Calcutta High Court in *Suresh* v. *Punit Goala*[5] which held that the person who makes a speech in the legislature cannot be held liable for its publication in a newspaper when he has himself done nothing to cause such publication.

Turning now to the decisions of the Supreme Court, we find that in *M.S. M. Sharma* v. *Krishna Sharma*,[6] the question was whether publication of expunged portions of Parliamentary proceedings amount to contempt. The Editor of *Searchlight*, a daily newspaper published in Patna against whom a show cause notice was issued for contempt of the legislature for publishing certain portions of a speech which were expunged by the Speaker, moved the Supreme Court on the ground that the issue of notice amounted to contravention of Arts. 19(1)(a) and 21. The questions that fell for consideration by the Supreme Court were whether the privilege claimed was a subsisting privilege in England and what was the result of the impact of the above two articles of the Constitution on the provisions of Art. 194(3). The Court was divided on the questions, the majority holding that the privilege claimed was a subsisting one at the relevant time and must, therefore, be deemed to be part of Art. 194(3). On the second point, the court held that Art. 19(1)(a) did not apply for the reason that under the rule of harmonious construction, where there was a direct conflict, as in the present case, the particular provision would prevail over the general contained in Art. 19(1)(a). The minority view was that the privilege claimed has not been established and, even if established, the provisions of Art. 194(3) must be controlled by Art. 19(1)(a) because the fundamental rights were of paramount importance and must prevail over a provision like that contained in Art. 194(3). It was further held by the Supreme Court that if a law prescribing the powers, privileges and immunities is enacted either by Parliament or the State Legislatures, that law would be subject to Art. 13 of the Constitution and would be void to the extent it contravenes the fundamental rights contained in Part III. The decision of the Supreme Court in *G. K. Reddy* v. *Nafsul Hasan*,[1] though it also concerned a newspaper, need not detain us for the reason that the question decided was whether Art. 22 would or would not apply to the facts of the case.

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[3] Section 3 of the Act.

[4] Section 4 of the Act

[5] A.I.R. 1951 Cal. 176.

[6] A.I.R. 1959 S.C. 395.

An examination of the privilege cases against newspapers amply reveals the uncertain state of law of Parliamentary privileges and their application to alleged breaches of privileges. Various newspapers and newspaper organisations have time and again raised their voices against this unsatisfactory state of law. From the time of independence, there were two schools of thought in this country, one favouring that the privileges should be defined by statute and the other holding a strong view that such a course was unnecessary and indeed unwise. So far, the latter view has prevailed. It was conceded at the time when the Constitution was on the anvil that to define Parliament's privileges as those of the House of Commons would create some ambiguity for the obvious reason that the powers, privileges and immunities of the British House of Commons are themselves not defined and can only be discovered by a study of the various cases. The fear expressed was that in view of the chapter on Fundamental Rights, if the Parliament or any of the State legislatures enacted a law defining its privileges, it would no longer be possible for them to avail of the privileges of the House of Commons and that the Supreme Court and the High Courts would have jurisdiction to interpret that law in the light of the provisions of the Constitution, which, in effect, might mean a curtailment of their privileges. There is also the fear that the most important privilege, that of the Parliament's right to punish for contempt or breach of privilege by issuing a general warrant without specifying the nature of the breach committed would not then be available. It was, therefore, considered safe to rely on the articles in the existing form which refers to the powers, privileges and immunities of the House of Commons of England. The result, therefore, is that no attempt has been made for nearly a quarter century, to define what these powers, etc., are and one has, therefore, to discover these privileges by wading through the pages of privileges committees' reports. After the Constitution came into force, the staunchest defence of the *status quo* came from the Speakers and the legislators and the strongest criticism came from the Press Commission. It is but natural that the presiding officers of the legislatures require the support of the historic claims of the British House of Commons. While recognising that certain privileges are essential for the effective functioning of the legislatures, the critics argued that limits should be set by law to avoid any ambiguity in the legal position and also to establish that the privileges are not beyond the purview of the courts of law. The critics also argued that the area of privileges should be clearly delineated by the courts in the context of the rights of the citizens rather than by the legislatures themselves in their discretion.

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[1] A.I.R. 1954 S.C. 636.

There has been much public criticism on this question not only in this country but in some of the major Commonwealth countries like Australia and Canada. In Australia, too, where the constitutional provision is analogous to the provision in our Constitution, there has been much criticism in this respect. A view has been expressed there that some of the privileges are perhaps out of date. It is, however, conceded even by the critics that the Parliament must be in a position to exercise disciplinary powers over its members and outsiders who attempt to bring the legislatures into contempt. It is on the question of punishment of non-members that is whether a citizen should be committed to prison without trial before a properly constituted court that the controversy centres. Morris-Jones in his book *Parliament in India* refers to the well-known case of *Bankstown Observer* in Australia where the editor was imprisoned on a warrant issued by the Speaker of the House of Representatives for breach of privilege. The High Court and the Privy Council refused to interfere with the decision of the Speaker. Morris-Jones[8] points out that "in a public discussion that followed the case, doubts were expressed if such powers ought to be exercised by a body like Parliament without even the possibility of appeal to the ordinary courts and an open trial." He further points out that Prof. H. Street in an article entitled *Parliament and the Courts*[9] has asked whether this Australian reconsideration would not 'afford a convenient opportunity to review the matter in England also.' Another writer points out that "in the opinion of an Australian

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[8] *Parliament in India* by Morris-Jones.

[9] Listener dated 24th November, 1955.

Speaker a newspaper criticism is not a breach of privilege unless something is done to coerce or impede members or bring Parliament into contempt."[10]

In yet another case in Australia, fear was expressed by some that the power of protecting the freedom of the proceedings of Parliament and its members, which was so hard to win, might possibly at this time be used not as a shield against oppression but as a weapon of oppression.

The point was made that few would deny to Parliament the right to commit summarily to prison a person who committed contempt on its face. Many would, however, feel that in respect of contempts outside Parliament the rather more conspicuously fair procedure adopted by the courts, where the offender is called upon to show cause why he should not be committed for contempt could, without loss of dignity, be adopted by the Parliament. It was further pointed out that in 1908 a committee presided over by Sir John Quick, an eminent constitutional lawyer, came to the conclusion that the "English procedure for punishment of contempt of Parliament is generally admitted to be clumsy, ineffective and generally not consonant with modern requirements in the administration of justice" and recommended that the High Court should deal with breaches of privileges.[11]

In England, too, which is the birth place of the Mother of Parliaments and whose procedure in this respect is being followed widely in all Commonwealth countries, Donald Thompson raises the fundamental question "whether the House of Commons is the best institution to decide questions of privilege" and points out that "the likelihood of the House of Commons considering this question is extremely remote, however important it may seem to an outsider." Parliament's sense of its own dignity is too deep-rooted to permit the abdication of jurisdiction in the matter of privilege. Few matters excite, he points out, the emotions of members more than such a suggested abdication. But it should be remembered that Parliament's historic struggle for its privileges was against the Crown on behalf of at least a partially representative Assembly and that in those days before the independencs of the judiciary was established there was good reason to fight against the courts' claim to jurisdiction. "Now a days it is generally believed that privilege exists for the protection of the public and an independent judiciary, which judicially notices the privileges of Parliament, would seem to be fully capable of deciding whether privileges exist, whether Elizabeth II is likely to send messengers to the House to attempt to arrest all unsympathetic members or are her Judges likely to accept the view that she may lawfully do so."[12]

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[10] *Parliaments* published for the Inter-Parliamentary Union by Cassell & Co. Ltd., London.

[11] Australian Law Journal, vol 29 p. 97.

In December, 1967, the Privileges Committee of the British House of Commons submitted a report on the question of the desirability of re-examination of the privileges enjoyed by the House.[13] A number of changes in the law and practice of Parliamentary privileges, that is, the rights, privileges and immunities which must be claimed and enjoyed by Parliament to enable the legislature to fulfil its proper function have been recommended by the Select Committee of Parliamentary Privileges. The committee was appointed to "review the law of Parliamentary privilege as it affects this House and the procedure by which cases of privilege are raised and dealt with in this House." The committee proposed that the use of the word "privilege" in this context should be discontinued since in modern times it has acquired a meaning wholly different from its original Parliamentary connotation and could convey to the public the false impression that members of the House of Commons are and desire to be a "privileged class."

The Select Committee found that the law as it stands today and the procedure relating to parliamentary privilege needed to be simplified and clarified and also to be brought into harmony with contemporary thought. In regard to the rights and immunities enforceable in the courts, its chief recommendation was the abolition of freedom from arrest in civil actions. The justification for this freedom was that the House should have the first call on the service of its members even to the detriment of the civil rights of a third party, but the committee considered that this is no longer valid. The freedom had lost much of its importance when imprisonment for civil debt was abolished in 1870; legislation should now be introduced to abolish it.

Among the committee's recommendations concerning penal jurisdiction of the House was the proposal that this should be used as sparingly as possible and only when essential to protect the House from improper obstructions. In future, if a member had a remedy in the courts, for instance, in the case of publication which defamed him, he should seek that remedy and not invoke the penal jurisdiction of the House. The committee also considered that procedure for dealing with cases of contempt should be changed in order (a) to reduce to the essential minimum the publicity attending upon a complaint before the publication of the report on it by the Committee of Privileges; (*b*) to avoid taking up the time of the House unnecessarily; (*c*) to provide machinery to describe the giving of publicity to complaints of a trivial nature and (d) to avoid unnecessary impediments to the raising of genuine and important complaints. In regard to the proceedings of the Select Committee of Privileges (which should be renamed the Select Committee of the House of Commons Rights), both the complaining member and the person against whom the complaint has been made should have the right to be present during the deliberations of the committee and the right to ask for legal representation which could in proper cases be in the form of legal aid. In so far as the penalties were concerned, legislation should be introduced to empower the House to impose fixed terms of imprisonment (at present the term may vary between a few days and several months, depending upon the period between the date of the order and the end of the session), to impose fines (the Select Committee considered that the House was at present handicapped by the absence of any such power) and to remit, suspend or vary any penalty which it imposes.

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[12] Public Law, 1959 pp. 10-12.

[13] H.C. 31 of 1967-68.

The reporting of Parliamentary proceedings is no longer a mere verbatim reproduction of the speeches of members. A great deal of skill is necessary in the selection of passages from long speeches in order to give a clear and balanced account of the entire proceedings. The modern experience of journalist is that it is neither desirable nor necessary to give a verbatim account of Parliament's proceedings because if a newspaper reader wants to he can always get the verbatim speech from the official reports. Moreover, the official report does not find its way into every household and the average voter knows nothing of what is said in the House except from what he reads in his newspaper. It is clear that all the debates are intended for the enlightenment and persuasion of public opinion. The Press shows a great sense of responsibility by being extremely accourate in its reporting. The task of journalist is to clothe the debates with vividness, wit and shrewdness. The bare words of the debate do not convey any meaning unless they are made easier to read and the reader is given the "atmosphere of the discussion". A perfectly straight and uncoloured account of the proceedings of Parliament would not convey to the reader a true picture ; sometimes it could positively be misleading. To illustrate, there may be occasions when a highly agitated member might remove the mace from the Speaker's table or may disobey the Speaker's orders. In such cases, the official reports merely give that "such and such Hon'ble Member proceeded to the table and removed the mace which was restored by the Marshal of the House". But, every newspaper would describe such a historic event at great length and with a colourful description. There may, however, also be occasions when an elaborate speech made in the House of Parliament may, in fact, be appropriate only for a small drawing room. While reporting such incidents, if a journalist uses a word or two too many or says something light-hearted and humorous, he could be hauled up for contempt of Parliament. To avoid such a contingency, the Parliamentary reporter takes the line of least resistance and publishes a bare narration of events. Thus, the present state of law has placed a very harsh restriction on his right to comment on the conduct of members and the way in which proceedings have been conducted in Parliament.

It may be that to work out a code is all but impossible. In keeping with the modern trends, Parliament should give up the expression "Parliamentary privilege" in its customary sense and speak of its "'rights and immunities". Secondly, the penal jurisdiction which it possesses now should be used sparingly and that, too, only when it is essential to protect the House from improper obstruction. Thirdly, when a member of Parliament has a grievance against a newspaper, he should seek his remedy in a court of law and he should not be permitted to invoke the penal jurisdiction of Parliament. Fourthly, Parliament may enact legislation defining the defences that are available to members of Parliament. Parliament should recognise the right of the people to be informed and the present concepts on reporting the proceedings should be formally given up. Parliament should acknowledge the right of the Press to be present as in law courts. This is not to say that the Parliament should dispense with all safeguards in its relationship with the Press.. It should retain the power needed to deal with any ill-informed or malicious attacks which are calculated to undermine the institution. At present, Parliament is over-protected. There should be greater tolerance of free and fair comment and that should be protected. Under the present practice, when a select committee visits different places, it is breach of privilege to mention this fact in a newspaper. The person whose conduct is referred to a committee of privileges should have the right of appearance, legal representation and defence as in courts of law before that committee. The Lobby correspondents should not be compelled by the Privileges Committee to divulge sources of information. It is my view that by making relaxation in these respects, Parliament would not lose its high status and dignity but rather be adding to it.

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PRESS COUNCIL

It is no surprise that the Press, which has for generations functioned without being subjected to any authority overseeing its functioning, the creation of an authority which can do so should view it with suspicion and disfavour. Thus, when the Press Commission recommended the establishment of a Press Council for safeguarding the freedom of the Press and also for laying down and safeguarding journalistic standards, it aroused great apprehension because it was felt by some journalists that the obligation to conform to certain standards was merely a way to restrict the freedom of the Press. The creation of a body to safeguard its liberty by curbing its excesses was a startling and unwelcome change.

Although the Press Commission recommended the setting up of a Press Council as far back as 1954, it was not till the year 1965 that Parliament implemented that recommendation by enacting the Press Council Act, 1965. The Council is established "for the purpose of preserving the freedom of the Press and of maintaining and improving the standards of newspapers in India."[1]

In the war, for increased circulations, many newspapers abdicated their responsibility for maintenance of professional standards with regard to accuracy, comprehensiveness and objectivity, misused the freedom of the Press guaranteed by the Constitution and virtually turned it into licence. Such abdication by a section of the Press of a sense of responsibility led to inaccurate reporting, comments couched in vulgar or abusive language or language which is unfair, publication of scare headlines, and for resort to character assassination and mud-slinging. Among the other vices which afflicted certain sections of the Press may be stated to be lack of integrity, want of fairness, making a point at the expense of someone who cannot answer back, giving expression to prejudices under the guise of 'subjective reporting' and then offering no opportunity of replying, knowing perfectly well that once you have 'launched a lie you can never overtake it'.

Then there is the vice of a perfectly straightforward story being spoiled or a wrong impression being given by putting a textually accurate but morally dishonest headline which creates a mental impression upon the reader which the subsequent text never corrects. After an elaborate examination of the various newspapers, the Press Commission found that there was a great deal of scurrilous writing in the country. It was often directed against communities or groups and quite often it exceeded the bounds of decency, indulging as it did in indecent, suggestive or vulgar writing. One editor admitted before the Press Commission that some of the passages he had written were "smutty" and it was such writing that sold his paper and added "when others are doing it, why not I ?" Another said that the readers desire "glimpses of the flesh and youth." This list of acts of omission and commission by the Press could be lengthened, but suffice it to say that techniques of this sort destroyed public confidence in the Press as an institution. The question arises why in such cases legal action should not be taken against the erring newspapers. The obvious answer is that no law, however well-drafted, can cover the whole gamut of these ills. It is for this reason that the Press Commission recommended that "such objectionable writing as is not legally punishable should be the responsibility of the Press Council."[2]

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[1] Preamble to the Press Council Act, 1965.

Clearly it is not the courts that can sit in judgment over such infractions of ethical norms for they are neither equipped to handle such cases nor does the procedure of the courts of law conduce to the quick disposal of such cases. The Press Commission pointed out that journalists had not come out to condemn the kind of unethical conduct to which some fellow journalists were prone. Their reluctance is a part of the general journalistic practice. But if such a task of criticism is left to a court of honour such as the Press Council, the Council would not hesitate to help in enforcing a code of conduct which lays down healthy norms of professional ethics and thus enhance the prestige of the profession. There was concensus of opinion that a properly representative body of journalists would, by their own conduct, both by example and precept, bring back the prodigal to its own fold in course of time. Before coming to this conclusion, the Press Commission had before it the recommendation of the first Royal Commission on Press in England and the then recently established British Press Council. The recommendation of the Royal Commission was that the Council should be a voluntary organisation, with a lay chairman and some laymen as members. Our Press Commission found that lack of statutory authority on the part of the British Press Council was a handicap in the exercise of its authority over the Press. Secondly, the decisions of the Council were upbraided by those affected and what was more important was that, while investigating a matter, it could not enforce attendance of witnesses or even journalists for giving any evidence required by the Council. The Commission, therefore, felt that there should be sufficient sanction behind its authority to make inquiries and take decisions and recommended the setting up of a statutory Council.

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[2] Press Commission Report p. 352, para 347.

For establishing a Press Council, a Bill was introduced in Parliament in 1956, but it lapsed with the dissolution of the House in 1957. It was only after the National Integration Council strongly recommended the establishment of a Press Council that the Press Council Act was passed by Parliament in 1965 and the Press Council of India came into being on 4th July, 1966.

Till the Act came into force, there was no organisation in existence on which representatives of different interests in the Press could sit together and deal with the problems of the Press. Collective self-regulation was an unknown concept to the Press in all democratic countries though responsible newspapers observed certain standards of ethical conduct and propriety. During the past few years, this concept has gained currency and today we find that many democratic countries have established Press Councils. The editors and journalists in the United States of America, who at one time scoffed at this idea and said that they were aware of their limitations and that no external authority was needed to do a kind of 'back-seat driving", seem to be veering round to the view of having a self-regulating body in that country too. A leading newspaperman once said that so long as there was a free Press, there should be a Press Council. It would be interesting to know that in its latest report the I.P.I. has observed that the freedom of Press is maximum in India and Japan.

The Press Council established in 1966 was charged with the task of fostering the development of the Press and of regulating the conduct of the Press in the matter of such objectionable writings as are not legally punishable. It will be remembered that the Press Commission had recommended that the Press Council should deal with matters such as maintenance of editorial independence, objectivity and accuracy in the presentation of news, fairness of comment, evolving and enforcing a code of ethics etc. The Act enacted by Parliament purports to give effect to these recommendations.

When the Press Council Bill was before the Parliament, journalistic opinion in the country was divided. The criticism was that an institution transplanted from another country seldom works efficiently. It was said that by and large the Indian Press had not developed the vices which the Press in Britain had, namely, intruding into the privacy of others, indulging in sensationalism, giving highly coloured versions of crime stories, maligning others, carrying on "cheque book journalism" and so on. According to another section, the Press in India is sober, dull and politically obsessed. It was argued that the Press in this country had shown considerable restraint in times of cirsis and has worked hard for national integration and boosting up the morale of the people at critical junctures. So, it was asked, where was the need for a Press Council ? This criticism overlooked one important fact. Bringing to book a recalcitrant journalist or censuring an erring journalist is but one of the many functions entrusted to the Council. The Press Council is not a criminal court to adjudicate on infractions of journalistic ethics. The important object placed before the Council is "to preserve the freedom of the Press and to maintain and improve the standards of newspapers in India". Its first task is to build up a code of conduct for newspapers and journalists in accordance with high professional standards. Amongst the other functions which the Council has to perform are to help newspapers maintain their independence, high professional standards, high standards of public taste and to foster a due sense of both the rights and responsibilities of citizenship and to provide facilities for the proper education and training of persons to enable them to practise the profession of journalism.

Undeniably the Constitution has guaranteed to its citizens freedom of speech and expression. This guarantee extends only to intervention by the State. The general complaint of the journalists and sometimes of the editors is that the freedom to express views freely and frankly is throttled by those who hold the dominant proprietary interest in the newspapers. The charge is that they make an attempt to mould public opinion to suit private interests by playing to the tune of their patrons and advertisers.

The Act has entrusted this aspect of the matter to the Press Council. It is the task of the Press Council to see whether the editor is still, many years after the Press Commission has made this observation, the "literary agent of the proprietor" or whether there is any improvement in this regard. If the answer is in the negative, to say what steps should be taken by the Council to ensure greater independence to the journalist and the editor. A duty is cast on the Council to include in its annual report "an account of the standards of newspapers and factors affecting them."[3]

A reading of the objects for which the Council is established and the functions entrusted to it, it is clear that the Council can play a significant role in maintaining the freedom of the Press and ensuring propriety on the part of the Press. The Council acts as a buffer between the Press and the public. It is its role as a quasi-judicial body sitting as a court to inquire into complaints against breaches of journalistic ethics that is important. In its capacity as an adjudicating body, it enquires into complaints against the conduct of the Press towards the public as also in a sense the conduct of the people and the Government towards the Press.

The Press Council Act confers power on the Council to entertain complaints made to it by any member of the public or *suo motu*[4] when it believes that a newspaper or news agency has offended against standards of journalistic ethics or public taste etc. The Council has provided a procedure for this by its regulations which, briefly stated, is that the complainant should first furnish the name and address of the newspaper, editor or working journalist against which or whom the complaint is lodged, with a cutting of the news item which according to him offends against journalistic ethics, together with a translation in English, if the passage is in a language other than English or Hindi and such other particulars as are necessary for proceeding further with the complaint. The complainant should mention in his complaint whether he has drawn the attention of the editor to the matter published in his paper which he thinks offends against journalistic ethics or public taste and whether a reply has been received from him or not. He should also state whether any legal proceedings are pending in a court of law in respect of the same subject matter. After these formalities are completed, a show cause notice may be issued to the editor or newspaper asking it or him as to why action should not be taken on the complaint. The complaint is considered by a committee of the Council called the Inquiry Committee. Both parties can adduce evidence before the committee, either oral or documentary, in support of their respective contentions. The findings of the committee are placed before the Council. The parties are entitled to appear before the committee as well as the Council either in person or through a legal practitioner.

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[3] Section 18 of the Press Council Act.

[4] Section 13 of the Press Council Act.

The Indian mind is reluctant to go to a court or a tribunal because of the long-drawn-out procedures adopted by them. There is no readiness on the part of the people to bring to the notice of courts even matters which affect their rights. Again, quite frequently, complaints either do not give full facts or do not care to supply information when asked. One complainant had even expressed fear of the editor and asked his complaint to be treated as "secret".

In the course of the past few years, the Council received complaints both from the public and the Governments against newspapers. What is more interesting is that complaints have been received from newspapers themselves alleging threats to their freedom by the activities of unlawful elements backed by political parties and the lukewarm attitude adopted by some State Governments towards giving protection to the Press. During the early days of its formation, the Council had taken notice *suo motu* of some of the editorials written in leading newspapers which pointed out the dangers to which the Press was exposed. I am aware that no easy solution could be found in such cases. For, the Press Council has only a moral authority and it cannot inflict any penalty upon anyone, much less bring anyone to book.

A question that might arise is: On what ground can one lodge a complaint with the Council ? Should it necessarily be on allegations published by newspapers against individuals, or on a ground that something is written in extreme bad taste or that a newspaper has intruded into the privacy of an individual citizen ? Should the complainant have a personal interest in the matter complained of ? For a complaint to be lodged with the Press Council, it is not necessary that the complainant should have a personal interest in the matter complained against. A complaint can thus be made on grounds, such as misrepresentation of facts in a news report, or because the headlines therein are misleading or on the ground that an article in a newspaper has stated as fact what was a mere conjecture and so on. A complaint can be filed where the complainant has "reason to believe that a newspaper has offended against the standards of journalistic ethics or public taste or that an editor or a working journalist has committed any professional misconduct or a breach of the code of journalistic ethics". The Act authorises the Council to take notice of such misconduct of its own accord. It need not necessarily wait for someone to lodge a complaint. After examining the complaint and the explanation of the editor in the manner explained earlier, the Council proceeds to express its opinion which, in gross cases, may be a censure.

The Council is not a court of law. It is a court of honour. The verdicts that it gives are not judicial pronouncements. Therefore, it cannot impose any punishment on the offending journalist nor can the Council impose any punishment on the offending newspaper or journalist nor again can it award damages to the aggrieved party. It merely pronounces its decision on the complaint. The only weapon in its armoury is moral authority. The sole strength of the Council lies in its appeal to conscience. The power conferred by section 13(1A) requiring a newspaper to publish therein any particulars relating to any enquiry under section 13 does not mean that it has any power to punish a defaulting newspaper. The experience of the British Press Council has shown that this power properly used and constantly exercised can become extremely effective. The public rebuke that the Council administers and the moral obligation of the offending newspaper to publish its decisions operate both as a penalty and a deterrent. The reason given is that it is a serious matter for a newspaper to have to inform its readers on whose respect it depends that it has been convicted of a breach of journalistic standards.

It would not, however, be out of place to illustrate the reaction of the Press to the publication of the decisions of the British Press Council in its early years. Nothing shows their attitude better than the response of an editor of a newspaper to a reader who threatened to go to the Press Council unless the editor corrected a factual error. Said he : "As for your threat you can report me to the Press Council, Madame Tussauds, the Society for the Protection of Sputniks, Nato, UNESCO or the Dancing Dervishes Association as you wish. May you enjoy yourself". The other one was a conversation that took place between a London editor and the Secretary of the Press Council: "When we sin we don't mind being smacked for it. But it ought to be done privately and not published to the wide world", said the editor. The Secretary replied that there was an easy way of avoiding the consequences of such sin. When asked "How"? the Secretary just said "Don't sin"! In Britain, though the editors, like their counterparts in other parts of the world, do not like public display of reproof, they have now come to accept it as a debt of honour.

Would anyone care for moral homilies that the Council, in its wisdom, pronounces and what would happen if the newspaper neglects such moral platitudes ? A pertinent question, this. But here again we can draw support from British experience. During the first few years of its establishment, the Council had to face virulent attacks from journalists, proprietors and the public. Savage words were used against the Council. It was jibed and sneered at. When the editor of a newspaper was once admonished by the Press Council, he attacked the Council in a ruthless manner and said "We did not know that the weakling was going to turn out to be also a bastard. I now feel rather like a father whose problem son has not merely gone wrong but developed a virulent Oedipus complex and made a howling ass of himself by exhibiting it embarrassingly in public". This, of course, was an extreme case. But the general climate of opinion in that country was not in favour of the Council for quite some years. It was called a "paper tiger with rubber teeth" and a "vague and powerless body". Its reproof was characterised as "a mere slap on calloused wrists". Referring to some of the criticisms, the Council once said that the critics are "in need of the curbs they propose for others, since they themselves are guilty of the offences they allege—wild exaggeration, distortion of truth, and the unproved assumption that they speak for the nation". During the last few years, the Council has grown in stature and its rebukes against newspapers and journalists have had a salutary effect. The reason is simple. No one likes to be admonished in public. Today newspapers and journalists are inclined to be more careful than ever before. Even those who at one time said "We have nothing to do with it; we ignore it completely and regard it as a completely futile body" are in favour of the Council. From "incredulous indignation" to "wary hostility" to "grumbling recognition" and ultimately to "acceptance" are the gradual stages through which the Council passed. "Countries with Press Council of their own, younger in years, and perhaps struggling for recognition, can take encouragement from the United Kingdom Council which survived the days of its rejection to become a national institution and the accepted custodian of the freedom and the morals of the English Press."[5]

I have dealt with a function of the Press Council as an institution which is by far the most important, namely, to adjudicate on complaints by the public against newspapers of breach of journalistic ethics. It is necessary at this stage to advert to the composition of the Indian Press Council and the manner of selection of its Chairman and members.

The Council consists of a Chairman and 26 other members.

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[5] Philip Levy in I.P.I. Bulletin.

For the purpose of selection of the Chairman and other members, the Chairman of the Council of States (Rajya Sabha), the Chief Justice of India and the Speaker of the House of the People (Lok Sabha)) constitute a nominating committee. Out of the 26 members of the Council, 13 are working journalists. Out of these 13, six are editors of newspapers and the remaining seven are working journalists other than editors. The other requirement is that the number of such editors and working journalists other than editors of newspapers published in Indian languages shall be not less than three. These persons are to the chosen from among those who own or carry on the business of management of newspapers. Again, one of the representatives of the management has to be from big newspapers, one from medium newspapers and one from small newspapers published in Indian languages and one each shall be a representative of big, medium and small newspapers published in any other language. One person shall be from among the news agencies. There is an element of lay members and this is provided by nominating three persons having a special knowledge or practical experience in respect of education and science, law, literature and culture. These persons shall be nominated by the University Grants Commission, the Bar Council of India and Sahitya Academy. Parliament is represented by two members from the Lok Sabha nominated by the Speaker and one from the Rajya Sabha nominated by its Chairman. Where a working journalist owns or carries on the business of management of any newspaper, he shall not be eligible for nomination under the category of working journalists. Another condition stipulated under this section is that not more than one person interested in any newspaper or group of newspapers under the same control or management shall be eligible for nomination either as a working journalist or as the owner or manager of a newspaper. The Act defines big, medium and small newspapers. Big paper is one the circulation of which exceeds 50,000 copies for each issue and a medium one is which has a circulation exceeding 15,000 but not exceeding 50,000 for each issue. A small newspaper is one which has circulation not exceeding 15,000 copies for each issue.

The procedure for inviting panels of names is prescribed by the Act. The nominating committee has to invite panels in the prescribed manner. Certain associations have been notified by the Press Council for being eligible to nominate members. Each of these bodies has to send twice the number of members to be nominated from such associations under different categories.

Where any association of persons fails to forward a panel of names when invited to do so, the nominating committee may invite such panels of names in the like manner from any other association of persons of the category concerned or may nominate members after consultation with such other individuals or interests concerned as it thinks fit. The nominating committee shall nominate only persons under different categories from out of the panels and no person shall be eligible for nomination under any of the categories unless his name is included in any of the panels of names. The names of the persons nominated by the committee will be notified by the Central Government in the *Gazette* and the nominations shall take effect from the date of notification.

The nominating committee has been given power to review any nomination made by it on representation made to it by any association mentioned above.

The Chairman and other members can hold office for a period of three years. If a member is censured by the Council for any unethical conduct on his part as a journalist, he ceases to be a member of the Council. There are certain other provisions relating to the resignation of the Chairman or a member ceasing to be a member of the Council which are not very relevant here.

I have earlier adverted to the provision relating to the functions of the Council and its power as a quasi-judicial body sitting in judgment over unethical conduct of journalists. An important feature in this regard is that there is no appeal from the decisions of the Council to any court of law.

For the purpose of performing its functions or holding an enquiry under the Act, the Council has been clothed with powers exercisable throughout India as are vested in a Civil Court while trying a suit under the Code of Civil Procedure, 1908. It can summon and enforce the attendance of persons and examine them on oath. It can require discovery and production of documents, receive evidence on affidavits, requisition public records or copies thereof from any court or office, issue commissions for the examination of persons or documents and finally for any other matter which may be prescribed. The Act recognises immunity of a journalist from disclosing his source of information. It says that the Council cannot compel any newspaper or a journalist to disclose the source of any news or information, published by that newspaper or received or reported by news agency, editor or journalist.

The Central Government pays to the Council in each financial year such sums as are necessary for the performance of the functions of the Council under the Act.

The annual report of the Council is to consist of a summary of its activities during the previous year as well as a resume of the standards of newspapers and news agencies and specification of factors affecting them. It can submit interim reports also where they are found necessary.

Immunity is conferred on the Council and the members from any legal action in respect of anything which is done in good faith or intended to be done under the Act. Where a newspaper publishes any report of the Council under the authority of the Council, no suit or other legal proceedings shall lie against any newspaper in respect of such publication. The Council has been given power to frame, among other matters, rules for the conduct of its business and also for holding enquiries etc. In pursuance of this power, the Press Council made the Press Council (Procedure For Enquiry) Regulations, 1971.

The most controversial provision in the Press Council Act as originally enacted was the one relating to the selection of members of the Press Council. Before the present amendment, the selection committee consisted of the Chief Justice of India, the Chairman of the Council and a nominee of the President. The Chairman was nominated by the Chief Justice of India. The nominating committee invited panels of names from each of the organisations notified by the Government and selection was then made from among the persons of standing in the profession. The Press Council, it was thought, should be composed of experienced journalists who had served the profession well and had earned respect in the country rather than delegates responsible to trade unions. The most vocal among such trade unions which objected to the selections was the Indian Federation of Working Journalists. Without any justification, it claimed to be the sole body which could represent journalists and claimed that the All-India Newspaper Editors' Conference and the Press Association of India do not and cannot represent the "journalists". Little surprise that this stand has had the support of some members of Parliament, including those who were members of the Press Council. Even after the amendment of the Press Council Act in 1969, the position apparently did not satisfy the Indian Federation of Working Journalists since they have been kept out of the

Council. Under the present law the nominating committee consisting of the Speaker of the Lok Sabha, the Chairman of the Rajya Sabha and the Chief Justice of India has also been criticised as not being impartial in making the selection. As a result, the three members of the Selection Committee resigned on the ground that their respective offices should not be dragged into any kind of controversy. In 1963, too, when the Press Council Bill was before the Parliament, these three dignitaries were asked to form the selection committee, but they declined to have anything to do with the selection, apparently for the same reason. Now that the attempt to bring them on the scene has failed, the matter is again before the Parliament for evolving a new procedure for the selection. In an atmosphere surcharged with polemics, no procedure would seem to meet the wishes of a certain section of the working journalists. Perhaps the best thing would be to ask each of their organisations to nominate its quota of members and the selection committee to nominate the Chairman. Instead of the Speaker, the Chairman of the Rajya Sabha and the Chief Justice of India, constituting the nominating committee, it should consist of the Prime Minister, the leader of the largest Opposition party and the Speaker or some other high dignitary of the State.

Now I shall address myself to the question as to what the term "working journalist" means. The term "working journalist" as used in the Press Council Act has been given the same meaning as given in the Working Journalists (Conditions of Service) Act, 1955. Its definition includes an impressive array of persons in the Press hierarchy from an editor down to a proof reader. It would be unfortunate for the Press Council if it happens that mere proof readers come to occupy the seats allotted to working journalists. The Press Commission did not envisage the inclusion of members of Parliament in the Press Council. No doubt the inclusion of lay members ensures that the voice of the public would be heard in the deliberations of the Council. But what useful purpose the members of Parliament can fulfil as members of the Press Council is difficult to see. The danger is that their presence may develop political overtones in the decisions of the Council. Used as a politician is to political thinking, such person cannot live away from politicking wherever he is placed. It would perhaps be better to exclude the members of Parliament from the Council and increase the strength of journalists of standing. That would at least add to the stature of the Council and help to raise its standard.

Recruitment of journalists possessing the necessary educational and technical efficiency has been considered as one of the most important problems "because on the quality of the individual journalist depends not only the status of the whole profession of journalism but the possibility of bridging the gap between what society needs from the Press and what the Press is at present giving it." The British Royal Commission emphasized the importance of recruiting men with good general educational and journalistic background for working as journalists in newspapers. In India, too, the Press Commission and the Committee on Small Newspapers have both laid special emphasis on a good educational background for recruits to the profession of journalism. It is perhaps for this reason that the Press Council has been entrusted with the task of providing "facilities for the proper education and training of persons in the profession of journalism."

Training in journalism is a comparatively new concept. The profession of journalism, unlike that of law or medicine, has no prescribed qualifications or statutory test for those who pursue or intend to take it up as their vocation. In fact, the earlier generations of journalists all over the world learnt the technique of their trade while on the job. Those who were in the profession as well as those outside, thus came to regard journalism as a subject which could hardly be taught. "What a monstrous thing that a University should teach journalism. I thought that was only done at Oxford", said Bertrand Russel. One of our own leading journalists said: "One can understand a degree or diploma course in horticulture or venereology. But how can any academic organisation train one to write crisply, cogently and charmingly?"

Traditionally, there has been a certain amount of hostility towards training in journalism. A journalist, it is said, is born and not made. There was only training "on the job" with no formally prescribed educational qualifications. This belief that "journalists are born, not made" remained firmly rooted even in the West till the twenties when the need for training in journalism dawned upon persons connected with the Press.

Recognising how important it is to have young men with good educational and technical background in newspapers, the Press Council had addressed itself to the task in the first year of its establishment. A sub-committee,* which was appointed by the Council for this purpose, made some recommendations the chief of which was to establish a central college of journalism, while at the same time becoming an examining body in respect of schools of journalism in the various parts of the country. There is a serious dearth of trained teachers in journalism as well as of books on the art of journalism in India.

"To build up a code of conduct for newspapers and journalists in accordance with high professional standards" is yet another function entrusted to the Press Council by the Act.[6] Much controversy centred round the point whether a code of ethics should be framed straightaway or whether it could be left to be evolved on the basis of case law which the Council built up in course of time. Before the formation of the Press Council and even during its early years, there was a clamour from journalists that the first and foremost task of the Council should be to frame a code of conduct for journalists so that they could be guided by such a code.

In the United States of America, the newspaper editors framed a code of conduct for themselves and the code received the approval of the constituent bodies. They, however, did not contemplate a rigorous enforcement of the code. The code was a device for implementing a view of life. But when it came to implementation, the sponsors were divided in their attitudes. The American Society of Newspaper Editors tried on one occasion to expel a member adjudged guilty of violating its canons but found to their chagrin that the by-laws did not confer on them the necessary authority to do so. The by-laws were therefore amended. What happened thereafter was an anti-climax. The amendment had deprived the members of any desire to use the by-laws. Their experience was that the "sort of tradition that gives strength of will was lacking when sanctions affected individual careers."

The British Press Council has pointed out that one comes across one of extremely stubborn difficulties in trying to frame a code of conduct. From the American experience the Council has learnt that while the American code had laid down admirable principles; these principles were not so much practical rules which could be enforced by a quasi-judicial body like the Press Council as moralistic expressions. Clear law, it was recognized, is the prime need of justice, but to achieve it is one of the difficult things in life. For this reason, instead of framing a rigid code of conduct, the British Press Council has slowly built up its case law by adopting "the methods of generations of Judges who produced the common law in England. They let it grow out of the decisions they gave."[7]

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[6] Cl. (b) of s. 12(2), *Ibid.*

After a careful examination of the question and after carefully comparing journalistic opinions and practices both in the United States of America and England, on the one hand, and informed journalistic opinion in this country, the Council felt that it should "build up a code in course of time through its own precedents in the process of dealing with specific complaints."[8] It endorsed the view of a leading journalist of India that "no code, however carefully drawn up, can possess the precision of law.........and it is not possible to lay down easily even rules of professional conduct, which it is easy to lay down for advocates and medical practitioners."[9] In coming to this conclusion, it was also felt that in a country so vast as ours with newspapers in various regional languages and facing various problems, it would be really difficult and perhaps hazardous to attempt to lay down a code of conduct which would be applicable to all newspapers. This decision, I am glad to say, has stood the test of the time and during the last seven years neither the journalists nor the public ever seem to have felt any inconvenience by reason of the absence of a code of ethics.

It is neither feasible nor necessary to examine in detail the various annual reports of the Press Council. Suffice it to say that the Council has been in existence for only seven years, and it is too early to say whether it has been a success and whether the object with which its formation was recommended by the Press Commission has been achieved. The unreasonable attitude adopted by a journalistic association, which is more a trade union than a professional body, and the equally unreasonable attitude of some politicians with a view to placating trade associations, is the chief reason why the Press Council has not made much progress. As I said earlier, it should essentially be a body of elder journalists by whose moral authority alone it should command the respect of the profession as well as of the people. It should not be supposed that it is just a forum for ventilating the personal grievances of anyone and everyone.

I am an optimist, initial pitfalls notwithstanding. I have every hope that those who are opposed to the very existence of the Press Council would realise its importance in course of time and would, realising their folly, co-operate with it. I would close today's lecture with the strong hope that during the next few years the Council would grow from strength to strength and establish for itself an honoured place among the journalists of the country, a position something comparable to the British Press Council.

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[7] Lord Devlin in his Preface to *Press Council* by Philip Levy.

[8] P. 63 of second annual report of the *Press Council*.

[9] M. Chalapati Rau in his book *The Press in India*, pp. 47-48.

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8

PRESS AND COMPANY LAW AND CONCLUSION

In this, the last lecture of this series, I propose to deal with an important topic, namely, the existence or otherwise of monopolies in the Indian Press which affects the freedom of the Press in an invidious manner. We have seen earlier that the freedom which the Press enjoys in this country is not higher than what a citizen enjoys and that the laws, though numerous, are not such as have impeded the exercise of that freedom. It is well known that India, like Japan, is one of the countries in which the freedom of the Press is the maximum when compared with other democratic countries in the world. But there are widespread allegations by journalists and politicians alike that the Indian Press is in the hands of monopolists whose dictates the journalists have to obey and consequently the both have lost their independence. The Government of India has made two valiant attempts in the past to control what they conceive to be monopolistic tendencies in the Press, first by enacting the Newspaper (Price and Page) Act, 1956, and then by promulgating the Newsprint Control Order, 1962. In both cases, the Supreme Court has held that the Government could not do indirectly what it could not do directly. At this stage, it is necessary to examine the views of the various journalists on this vital question.

The term "Big Business" is generally used by the Leftists as a synonym for monopolistic interest either in the newspaper industry or in other industries. With reference to the newspaper industry, they use the term to mean the *Times of India* group, *Hindustan Times* group and the *Indian Express* group. In the wider sense of the term, however, Big Business is used to include the *Hindu* of Madras, *Amrita Bazar Patrika* and the *Statesman* of Calcutta, which are the largely circulated papers in the Southern and Eastern States of India.

The question is how far is the freedom of the Press restricted by reason of the fact that in India big business interests own the largely circulated newspapers? Did the fact that the newspapers are owned by those people whose main interest is other than newspapers affect the freedom of the journalist? In other words, do they use the Press to subserve their personal or business interests at the cost of public good?

The argument of those who assert that there is a Press monopoly in India is that the newspaper industry in our country is unique in that the bulk of the industry is a subsidiary to and a hand-maid of other powerful "financial empires" of the industrialists. To compare them with Beaverbrooks, Rotheremeres, Northcliffs, Thomsons of England, they point out, is misleading. The newspaper magnates in England and other Western countries are the products of the newspaper industry alone and are responsible to the public. To the Indian counterparts of Beaverbrooks and Rotheremeres, the newspaper industry "is an accessory of Big Business and a means of exercising extraneous influence and power" with the result that in India the newspapers have lost their status and dignity and their "factory managers are managing directors of newspapers and may think that newspapers are products no different to gunny bags."

The argument of those who belong to the organisations of 'working journalists' further is that politicians exercise as much "pestiferous influence" as the proprietor of a newspaper and exercise that influence surreptitiously, in collaboration with Big Business interests.

The Press Commission has devoted an entire chapter to ownership and control of the Press. It has pointed out that the newspapers give not only news and views but that they also perform an educational and propagandist function and thus influence opinion, conduct and action in many fields—social, economic, cultural and political. The news and views which newspapers carry serve a vital public interest which it is necessary to safeguard. While in other products of industry quality is of the essence to the buyer, in the newspaper sensationalism, extravagance, vulgarity and the like have a good sales appeal. Since a newspaper is a public utility service, some measure of restraint and regulation is necessary on the exercise by the owners of their rights as proprietors. While in the past, the editor had a free hand, the Commission pointed out, in recent years managerial control over the contents of the newspaper and the editor has increased enormously.

Referring to the newspapers owned by businessmen or industrialists, the Commission pointed out that the managements adopt editorial policies which advance directly or indirectly the interest of the business community as a whole or of a particular business interest or of the interest of the proprietors. In support of this statement, the Press Commission has given a number of instances where the management has interfered in the editorial writing as also in the content of the newspapers. To quote only a few examples, the Commission has pointed out that one particular Managing Director directed the editor to support certain named candidates at the elections. In another, the proprietor gave instructions not to publish any photograph or life sketch of any candidate standing for elections. In some cases, the proprietor had two editorials written and kept ready to be released at the last minute depending upon whether he would support a particular candidate or oppose him. Another case cited by the Commission is that of an attempt made by certain papers to boost the activities of the proprietors or the concerns in which they were interested and pointed out that these persons have managed to occupy very much more space than they deserve. Some of the leading articles were in the nature of advertisements to catch the eye of the reading public. In the columns of newspapers certain misleading information was given just to help the proprietor in his business dealings.

The Commission concedes the right of the owner to express his opinion in the newspaper. It has, however, said that diversity in the expression of opinion is the very essence of freedom of expression and noted that though at that time there was no monopoly as such, they felt that there was a possibility of regimentation coming in.

These observations of the Press Commission have been quoted over and over again to drive home the point that proprietors interfere in the writing of editorials or that they launch upon propaganda in some cases to suit their interests. The difficulty that one encounters at the threshold is that there is no authentic published material either to corroborate or contradict what the Press Commission has said. There has been no attempt by anybody to examine whether, as has been stated by the Commission in its report, the proprietors are using the newspapers as a means by which they can propagate their own personal views or boost up their own image before the public eye or to secure indirectly financial benefit for their other enterprises. The Press Commission has relied very heavily on certain views expressed by some of the witnesses before it, but it does not seem to have had any material to corroborate the views expressed by some witnesses nor has the Commission tested the correctness of their statements by a close examination of the newspapers. Yet the statements made by the Commission have become an authority in support of the view that the "Big Business" interests misuse the power of the Press even though the Press Commission has nowhere said so.

Theoretically, shareholders have the power of appointing such persons as directors as they may choose. The management of a company is thus expected to be carried on according to the broad wishes of the shareholders. The Companies Act, 1956, specifies the powers which are to be exercised by the company in general meetings, that it by the shareholders of the company, and therefore these are not capable of being delegated to the directors of the company. These powers are to change the company's memorandum or articles of association, to remove a director before the expiration of his tenure and so on. The Company Law has conferred on the general body of the shareholders a broad control of the company's management which is expected to be carried on a democratic manner. If we look to the practice obtaining in large companies, the shareholders' democracy as envisaged by the Act has failed because only a small number of shareholders are in a position to control the affairs of the company and this is so because of various reasons. The most important among these are that the majority of the shareholders of a company are scattered all over India, that the shareholders are not interested in the company's affairs so long as dividends are paid, that in most cases a large number of shareholders possess only a few shares in the company and, finally, that their total shareholding is negligible as compared to the shareholding of a few dominant members. Again, despite the safeguards built in the provisions of the Act, impediments are often put at a meeting of the general body of shareholders in getting at vital information regarding the affairs of the company. There are also other factors which are somewhat disconcerting, such as the separation of management and control from the ownership of companies and the growth of the concept of public interest in companies. This tendency becomes all the more alarming when we examine the newspaper industry..

What I have said above are the general maladies. But with particular reference to newspapers, there are many allegations that a powerful coterie of directors use this powerful medium to promote their own personal and business interests. It is a peculiar characteristic of the pattern of ownership of the Press in India that the largely circulated newspapers are owned by business magnates whose main effort is to promote their own interests at the cost of public interest. In support of this allegation, it is said that these newspapers do not attempt to educate the reader by analysing the annual accounts of big companies, more particularly the business dealings of the directors concerning their other business interests. It is also said that they either publish tendentious information which helps to boost the private interests of the directors or suppress such information as would harm their interests. In support of these allegations reference is made to the views expressed by the Monopolies Commission and the Vivian Bose Commission. I have dealt with these matters elsewhere in the course of this lecture, but all that I would emphasize here is that the failure of a shareholders' democracy is a malady not confined only to newspapers alone and that the allegations need a deeper and systematic probe. It would be well for the Government to bear in mind that any attempt to tamper with the freedom of the Press in a huff would endanger the very foundations upon which our democracy rests. Similarly, the journalist, however zealous and sincere he may be, has to be careful lest he happens to transgress the bounds set by the law of defamation.

Now I shall deal with the question of monopoly. Since the tests laid down for monopolies in general are not applicable to newspapers, some have called it an oligopoly, which means a group of papers or owners joining together to control the news media to the exclusion of other small papers. It is also said that the monopolist either absorbs or totally eliminates the weaker competitors one by one. In this context it would be necessary to examine in detail whether there is such an oligopoly and, if so, whether there is an implied or open understanding among them to shut out certain news from the purview of the reader solely for the purpose of promoting their personal or business interests. When there is more than one newspaper in a given area either in an Indian language or in English each competing with the other, it is difficult to say that the competing newspapers join together to indulge in any kind of sharp practices unless it is said that they have an understanding even to share profits or in other words they are a combine or a cartel. But there is no such allegation. Instances are not wanting when the newly-started newspaper has survived a severe competition of established rivals and there are also instances when an established paper had not been able to stand competition of newly-started newspapers. In both cases, the matter for investigation is why a paper succeeded and the other failed.

The Press Commission went into this question in great detail and examined whether there was a monopoly in respect of each language newspaper in each of the States of India. The conclusions arrived at by the Commission were that every metropolis was served by at least two or three big papers in each of the languages of the area. The effect of a number of chains, combines and groups operating from different metropolitan centres had been to provide a considerable choice to the readers. These metropolitan papers competed with one another throughout the area they served. As a result, even in the towns where no papers were published locally, a wide choice was provided. Secondly, generally in any town where a provincial or district paper of some standing was published, it was able to secure the largest share in the total readership notwithstanding competition from the metropolitan or provincial papers and regardless of disparities in size, production standards and news services. The effect of circulation of the metropolitan papers had, however, been to obviate the local monopoly that such provincial or district papers might otherwise have enjoyed. Thirdly, outside the towns of publication, both provincial and metropolitan papers competed with one another. Fourthly, even in the towns where no paper was published the readers had a wide range of papers to choose from because of (1) and (3) above. And fifthly, there were no large-scale monopolies in any town or city. In some States like Assam, where journalism had not yet developed, the Commission said that the degree of monopoly existing there might be reduced with the further growth of the Press (para 806). The final conclusion reached by the Commission was that on the whole its enquiry had established that there was freedom of choice for the reader (para 807).

In *Bennet Coleman's case*,[1] Mathew J., in his dissenting judgment, has examined in detail the concept of freedom of the Press and the effect of the impugned restrictions on newspapers. In the course of his judgment, the learned Judge has relied heavily on American decisions as well as opinions expressed by writers on the subject. In my view, they cannot be applied to Indian conditions in toto.

In a developing country like ours, it is not easy to have a free market of ideas to an unlimited extent. The starting of a newspaper requires a huge capital outlay, import of machinery and a band of well-trained journalists. It is acknowledged on all hands that the need for rapid development of the Press is an urgent necessity in this country. Journalists tell us that the *per capita* consumption of newspapers in this country is very low when compared with many developed or developing countries in the world. During the last few years, governmental restrictions were not many in the matter of import of machinery, etc. Even so, not many entrepreneurs have availed of the opportunities to start new newspapers in the country. It is undoubtedly true that for a newly-started newspaper it is difficult to stand the competition of the established newspapers, but instances are not wanting where newspapers, despite many odds, have been able to stand up to the competition of established newspapers and make their mark in the newspaper world. What is, therefore, more important is the will to survive on the part of a small or newly-established newspaper and to make it a success. It is my experience that in most cases newly-founded newspapers do not have the will to survive. Apparently their excessive dependence on Government aid turns them into failures.

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[1] *Bennet Coleman Ltd.* v. *Union of India*, A.I.R. 1973 S.C. 106: 1972(2) S.C.C. 788.

The survey conducted by the Osmania University Department of Journalism tells us why certain newspapers do not have larger circulations. The five most important reasons related to the coverage of news, delivery of the newspaper on time, printing of newspaper, the quality of the newsprint and pictures. Some complained of lack of specialised articles by reporters and wished that less emphasis was placed on politics and more attention was given to social reforms, special features for children and others. The readers want a better, wider and quicker coverage of different types of news. That was the suggestion made by the highest percentage of the people approached. Next in order of importance are prompt delivery, better printing and the need for more and better pictures. Delay in the publication of news items is a common complaint of the readers made to the survey team. The delivery system, they said, needed a drastic improvement. The papers very often were delivered after the readers left homes for their places of work. They had also complained that the newspapers would not even give correct references to the continuation columns appearing on subsequent pages. It seems to me that these are the most commonly made complaints of readers with regard to small and medium newspapers. When a newspaper does not devote any attention to the small aspects which would please the reader, it cannot be expected to stand up to the competition of bigger newspapers whose service to the readers is perhaps more efficient than the news coverage and comments.

There is then the allegation that there is concentration of mass media in a few hands which means that propagation of ideas antagonistic to the ideas of the proprietors of big newspapers putting them before the reading public has become very difficult. In support of this view, reference is frequently made to the views expressed by the Monopolies Commission as well as the view expressed by the Mahalanobis Committee on Distribution of Income and Levels of Living. It was stated by this Committee:

> "Of these, newspapers are the most important and constitute a powerful ancillary to sectoral and group interests. It it not, therefore, a matter for surprise that there is so much interlinking between newspapers controlled to a substantial extent by selected industrial houses directly through ownership as well as indirectly through membership of their boards of directors. In addition, of course, there is the indirect control exercised through expenditure on advertisement which has been growing apace during the Plan periods. In a study of concentration of economic power in India, one must take into account this link between industry and newspapers which exists in our country to a much larger extent than is found in any other democratic countries in the world."

Let us now examine the ownership pattern of newspapers in India. Out of the six major national newspapers published from metropolitan cities of Madras, Bombay, Calcutta and Delhi, the *Hindu* of Madras, the *Amrita Bazar Patrika* of Calcutta and the *Hindusthan Standard* are family proprietorship concerns. These families have no economic stakes or interests of any significance outside the newspaper business. The *Statesman* is owned by a corsortium of eight industrial houses from Calcutta and Bombay, each owning 12½% of the share capital. The trust experiment envisaged for this paper did not seem to work satisfactorily and is now abandoned. The *Times of India* owned by the S. P. Jain group is now managed by a Board of Directors appointed by the Government of India. Governmental interference in the management of this group of papers was the result of certain judicial pronouncements following the discovery of certain financial irregularities in the conduct of the company. The proprietors of this group of papers have little or no voice at present in the management of the newspapers. Next comes the *Indian Express* owned by Goenkas whose principal business till recently was the newspaper. They seem to have acquired some extra newspaper interests in recent years. The *Hindustan Times* and the group of papers under it are owned by several Birla companies who have wide business interests in the country.

Thus, we find that those newspapers whose proprietors have other business interests are, therefore, two or three, the total circulation of whose newspapers, when compared with the overall circulation of all newspapers in the country, cannot be said to be in a commanding position. The term monopoly in its normally accepted connotation is that it is an exercise of exclusive control over the production and sale of some commodity or service. Where there is monopoly, there is no room for any kind of competition. In respect of newspapers it cannot be said that there is such monopoly. For want of a better definition of monopoly, the Press Commission adopted the definition given in the Monopolies and Restrictive Practices (Inquiry and Control) Act, 1948, of the United Kingdom. That definition says that a "condition of monopoly is deemed to prevail in so far as the sections of the Act are relevant to the ownership or supply of newspapers 'if at least one-third of all the goods of a particular description, which are supplied in the United Kingdom or a substantial part of it, are supplied by one person, or by one group of inter-connected companies or by two or more persons who so conduct their respective affairs as to prevent or restrict competition in the supply of goods of that description..." The Commission further said that they were of the opinion that a monopoly should be deemed to prevail if a predominant part of all the newspapers sold in the whole country or a substantial part of it is supplied by one person or by one group of inter-connected companies. Notwithstanding this test, the Commission further pointed out that it would not be possible to apply this criterion mechanically in all cases. I entirely agree with the view of the Commission that it is not possible to apply this criterion mechanically nor does any of the existing conditions in the newspaper industry in the country satisfy any part of the test laid down by the Commission. I should not, however, be taken to mean that my conclusion is that there is no Press monopoly in the country. Whether there is a monopoly or not is an aspect which needs a deeper probe by a competent body. If the term monopoly is to be applied solely on the basis of circulation figures, the Communist Press in India, which publishes more than two score newspapers with a circulation of over a few lakhs of copies, is the topmost monopoly Press. Curiously enough it is this Press which is the most vocal in condemning concentration of ownership and its consequences on readership. I wonder whether in our country there is such concentration of ownership as in this Press. As a learned writer has pointed out "the first and foremost task of those concerned in dealing with the problem is therefore not merely to restrict the monopolist from growing in size as the Press Commission's report seems to suggest but to uproot the sapling, such as the Communist Press, before it has taken strong roots"—"The Press" Seminar Vol. 42, Feb. 1963, page 20.

Opinions differ on the question of the power of a newspaper to shape public opinion. Some journalists have expressed the view that a newspaper can make or mar the career of a politician by playing him up or playing him down. There are others who say that the power of a newspaper in shaping public opinion is at the most marginal. I belong to the latter class. I believe that the newspaper is not that powerful as to destroy the reputation of a person or can get away with any evil propaganda. Today the people are sufficiently enlightened—at any rate the urban population—to distinguish between what is propaganda and what is plain truth. Those of us who are in Delhi are aware of the vagaries and high living of some of the Ministers and politicians. If a newspaper publishes any material on the record of the Ministers or politicians that only confirms the views held by the members of the society. In that event, we see that the newspaper is only reflecting our own views and makes the wider public know what otherwise may not be known to them. If, on the other hand, a newspaper suppresses or hides such news it only confirms that the newspaper is displaying bias. When a newspaper indulges in outright propaganda or goes much out of its way in building up the image of a politician, it is in my view more often than not bound to fail in its attempts. Let me illustrate this point with a practical example.

In the general elections of 1967 all the newspapers, without exception, had taken the stand that the Congress candidates from a New Delhi constituency had a definite edge over its Jan Sangh rival who was formerly a Government servant and had entered the field of politics just that year. It was dinned into the ears of all newspaper readers that a veteran politician like the Minister would have an easy walk-over in the elections and all the newspapers had foreclosed the issue of election in his favour. If such a propaganda could have any impact on the mind of the voter, the Congress candidate should have won with a thumping majority. But the result of that election had shown that the Jan Sangh candidate, whom all newspapers had underrated, had been returned to Parliament. This, as it would appear, is because the reputation of the Minister at that time was at a low ebb and people were not easily carried away by the unremitting propaganda by the newspapers. In cases where a candidate supported by a newspaper is elected, it is not because the people were led away by the propaganda of the newspaper but because the candidate had an inherent merit in him or that other forces were in play, as for example, splitting up of the votes by the presence of a number of candidates in the field and so on. Indeed, after the elections many newspapers had commented that newspaper reporting had little or no effect on the election results in so vast an electorate as ours.

This leads me to another important question whether there is any public opinion in this country at all and if it exists what effect it has on the functioning of the government. I am of opinion that there is no public opinion worth the name in this country and even if it exists it has little or no effect on the government. The recent resignation of Mr. Wily Brandt, the German Chancellor, is still fresh in our minds. His association with a spy from East Germany or as some papers have reported his association with a woman of ill-repute has come to light and within hours after the scandal came to light the Chancellor tendered his resignation from his high office. In India, we have seen public scandals of great magnitude in which Ministers were involved and judicial verdicts were given about the involvement of the Minister in shady transactions. Even after such an uproar both in newspapers and in Parliament, the Ministers were rehabilitated and were taken into the Cabinet with no ripple of resentment from the people! I doubt if any Government, which respects public opinion or which is afraid of adverse public opinion, would ever do that in any other country having democratic traditions.

On the other hand, I also doubt whether any Government worth its name would ever be cowed down by an assiduous propaganda carried on by a newspaper against its policies and performances. No Government, I believe, would look to newspaper opinions for shaping its foreign policy or its domestic or economic policy.

These are the many and varied problems which stare one in the face at the threshold, The allegations made so far by journalists, politicians and others are more based on personal views and no attempt has so far been made by any organisation to sort out these views and come to a firm conclusion on the existence or otherwise of a monopoly in the Press. The Monopolies Commission, to which frequent reference is made in this connection, has not applied its mind to this question with any seriousness and has not examined it in all its bearings. To my mind it appears that what they have said was only a passing reference. Even the Mahalanobis Committee's report, to which I have already referred, has not examined the issue in detail. For example, the Committee says that "even so, *there seems to be some force* in the contention that the section of the Press that is under the control of the big industries tends to obstruct the very formation of public opinion by presenting too rosy a picture of the performance and practices of big business in general and by slurring over many of their malpractices". In the end the committee expressed the view that "we do not think that much can be done to remedy this state of affairs". It is apparent from the above that the

Committee has only vaguely expressed the view that "there seems to be some force" in the contention but has not attempted to probe deeply into the matter and come to a rational conclusion on the basis of the material supplied to it, if there was any.

In a matter of grave importance concerning the freedom of expression, the views expressed by any individual or body, however well informed it may be, cannot be treated as authoritative for the purpose of pronouncing an opinion on the existence of monopoly in the newspaper industry. In our country, where there is no united opposition and where the newspaper works as an extra-constitutional opposition it would be a serious threat to the right of freedom of expression if the newspapers are subjected to any control by the Government. As luck would have it, the Supreme Court has struck down as unconstitutional two attempts made by the Government to exercise some kind of control over the newspapers in the name of containing the monopolistic tendencies in the Press. Yet I believe it is not a problem which should be left undecided for any length of time. It is my hope that the Press Council, after it is duly reconstituted, would address itself to all the allegations levelled against newspapers, particularly on the question whether the newspaper industry in this country has been the cultural arm of certain industrial houses. I do not think that by merely adopting statistical methods based on capital outlay, circulation, advertising revenue, etc., it is possible to arrive at a satisfactory conclusion on this point.

Within the limited time at its disposal, the Press Commission had conducted a survey, among other things, of the contents of newspapers. The conclusions arrived at by the Commission revealed both favourable and unfavourable aspects of newspapers. But after 1954 no survey into contents of newspapers seems to have been undertaken. There is, therefore, an acute shortage of information on many aspects of the newspaper industry. A limited survey conducted by the Department of Journalism of Osmania University on the Newspaper Reading Habits in Hyderabad-Secunderabad has revealed some interesting facts. Newspapers are bought by people for various reasons. The purpose of a newspaper seems to differ from one age group and another, one sex and the other, one profession and another. Many people seem to buy newspaper not so much for forming any opinion on any subject as for the purpose of getting purely local news, or news of national or may be international importance depending upon the educational and cultural background of the reader. Sports and cinema news is sought by young men and women, business information by business people, comic strips by children and so on. Most people seem to have expressed the view that they would not place implicit reliance on news items of one newspaper only, but that they like to verify the correctness of a news item from other papers. A majority of people read more than one newspaper and check up the news contained in one paper with another by sharing with a neighbour or having a "circulating library" in the office, or seeing a newspaper in a cafe or a saloon. Among those who regularly read newspapers only 14.4% seem to read editorials and only 4.8% read articles. The least interest shown is in the proceedings of the legislature, possibly because of the lack of colour in them. The reasons given for reading editorials is "because they are generally written in good language", "for general knowledge" and "to improve my English". The survey adds that "very few commercial and still fewer unskilled workers are interested in reading editorials". (p.45). Among those who showed no interest in newspapers gave the reasons that political news is "all propaganda", that they are "not interested in politics", that the editorials were "not written out of conviction", or that they "can't understand" them! The conclusion of the survey was that "obviously editorials are read by many more newspaper readers but not with so much interest as to get a place among their three most preferred items" (p.53). "Those reading Telugu and Urdu newspapers are not so much interested in editorials as the readers of English newspapers". Some expressed the view that the "editorials were not impartial and they should be impartial'". The percentage of Telugu readers making this suggestion was particularly high (p.54). Yet another interesting conclusion of the survey was that "on the whole a little more than 30% of the newspaper readers do not accept as indisputable truth all the news reported by newspapers" (p. 60).

The inference that one could draw from the findings of the survey is that few people read a newspaper or papers for the purpose of forming any political, economic or other opinion. Valuable though the survey is from the factual point of view, a survey of a kind which probes deeply into the more controversial aspects of newspapers, on the content of newspapers as to whether the reader agrees with the views expressed by the journalists and such other matters would throw more valuable light on the points of controversy.

There can be no dispute on the point that the freedom of expression is indispensable to the operation of a democratic system of government. In a democracy the people are both the governors and the governed. To form a healthy, enlightened and wise judgment' of the affairs, which concern the governance of the country, they should have before them all aspects of the question on which a decision has to be taken. As Justice Holmes has said "the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of thought to get it accepted in the competition of the market and that truth is the only ground upon which their wishes safely can be carried out".[2] It is also true that dissemination of news should be from as many different sources and with as many different facets and colours as is possible. For this purpose dissemination of information from diverse and antagonistic sources is essential to the welfare of the public. I am also aware that a situation in which the newspaper reader, instead of getting access to varied views, is fed on only a single set of facts or single body of opinion all emanating from one or two owners, strikes at the very root of the concept. When there is such concentration, it defeats the very purpose of freedom of speech. When there is excessive concentration of this power in a few hands, it is they who determine what facts should be placed before the public, how they should be placed and when they should be placed and so on. Thus the people are denied the opportunity of studying various points of view and the constant dinning of one point of view into their ears through the medium of the newspaper holding a monopolistic position will not be conducive to the formation of healthy opinion. I have no doubt that at least theoretically there can be no two opinions on this point. There is always a need for diversity of opinion and to the exercise of the right of freedom of speech and expression by every citizen and not merely by one or two owners of newspapers. But however desirable it may be, if we take a practical and realistic view of the matter, we find that it is not always possible to place all divergent or antagonistic views before the people. Even assuming that it is possible to place such a vast material before the public I am afraid in the existing conditions in India it is not possible for the reader to buy a number of newspapers to enable him to read a large variety of views before coming to a conclusion of his own. It is all a question of practical economics more than anything else. "In India, the primary school teacher has to spend one month's salary to subscribe to twelve months' newspaper. How can we expect this poor, interested reader to make this big sacrifice? In Calcutta, the cost of a moderate breakfast is equal to the price of a daily newspaper. Will a man in the street give up his breakfast for his copy of a newspaper?" asks a journalist. I am inclined to agree with him. With the steep rise in the price of newspapers, now as much as 30 ps. per copy, it appears to me that even those who were buying a separate copy for themselves may no longer be in a position to buy one. It is conceivable that with the high cost of newspapers, people in the lower middle income group may have to share a newspaper with others. Whatever little prospect there was for a man buying more than one paper has practically disappeared under the present conditions.

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[2] *Abrama* v. *U.S.*, 250 U.S. 616, 630.

Under the present circumstances neither an entrepreneur can start a newspaper nor can a citizen afford to buy more than one newspaper per day. We have, therefore, to take a practical view of the existing situation and see whether it is possible to rectify it instead of waxing eloquent on what are merely theoretical propositions. "While the prices are going up constantly my salary has remained almost static over the years", complained an upper division clerk of a Central Government office. And he added in a whisper "I really cannot afford to spend Rs. 3 per month on a newspaper which works out to Rs. 36 a year. But I go to the library everyday and read all papers". (p. 18, Osmania University survey).

The question of news coverage was a topic which had exercised the mind of the Press Commission. Perhaps to examine the correctness of the various allegations against newspapers the Press Commission had, within the short time at its disposal, instituted a sample survey into the manner in which the newspapers reported news or commented upon certain news items. The survey was for ascertaining as to whether there were any deliberate inaccuracies or any avoidable mistakes or slips, or whether essential facts were deliberately omitted or suppressed to suit the editorial policies of the newspapers keeping in view the limitations of news coverage, presentation of news and presentation of views, the responsibility with which the newspapers commented, whether the newspapers had displayed any bias either towards a politician in office or towards the interests of the proprietor and so on. One of the important findings of the Commission was that in almost all newspapers the items that the Commission had examined had been printed from agency reports. Thus the Commission observed that newspapers in India depend a great deal on agency reports.

It is also our observation that most of the newspapers, not excluding the so-called national dailies, contain a large amount of agency reports and Press hand-outs issued by the Government. The Commission said that by and large in the matter of presentation of news and the presentation of views the general performance of newspapers has been one of satisfaction. But the Commission realised that in a matter of such importance a survey of the nature undertaken by it could not indicate whether the Press was doing anything to give a correct picture of current events which was essential. In the nature of things, it was not possible for the Commission to conduct a continuing survey of the Press or a review of the Press and the extent to which it was performing its duties. The Commission, therefore, recommended that there should be a continual review of the content of newspapers and the publication of an annual report on the manner in which they have discharged their responsibilities. It, therefore, recommended that this should be done by the Press Institute. This responsibility has however been entrusted to the Press Council by s.18 of the Press Council Act. Under this provision, the Council is expected to incorporate in its report an account on the standards of newspapers. But perhaps in view of the controversy about the constitution of the Council, it has not been able to devote much attention to the question.

That apart, the Press Commission has itself recommended that the Press Council should conduct an investigation into the existence of a monopoly in the Press on the basis of newspaper circulation.

The Press Commission recommended that it would be useful if the Press Council would conduct the enquiry on the following lines :

(1) Does a monopoly exist?
(2) Has the newspaper which holds a monopolistic position acted against public interest?
(3) Has the newspaper employed practices which, though technically not coming within the category of unfair practices, still tended to eliminate competition?
(4) What measures, if any, are necessary to deal with the monopolies?

I am in full agreement with the view of the Commission that when an investigation of this character is conducted adequate opportunities to the newspaper concerned as well as to the public should be given to state their views on the subject. An investigation of this nature will also throw light on unfair practices, if any, in which the newspaper might have indulged.

Secondly, members of the general public who realise the danger may change to another paper and the starting of rival papers would also be stimulated. I need hardly say that any other method by which the Government attempts to control the Press in the name of containing monopolies is fraught with serious consequences. The present practice of helping the small newspapers through slow speed broadcasts has many dangers lurking behind them. For if a newspaper gets as facts what has passed through the sieves of the All India Radio, it is obvious that those facts may not be complete or may even have been dressed up to suit the policy of A. I. R. or to suit the official policy of the Central Government. Editorial comments on the basis of such material may well be misleading. Equally dangerous is the attempt of the Government to start a Newspaper Finance Corporation which, however well guarded may be the provisions of an enactment, the newspapers which take loans from Government sources would be beholden to the Government and this would strike at the root of the concept of freedom of Press. Let us not forget in this respect the grave warning of the Press Commission when it said "We are strongly opposed to the subsidising of such competition in any manner by the Government" (p.312). Let us not forget the age-old saying among journalists that facts are sacred but comment is free. Could one reasonably expect of newspapers dependent of the Government to have the courage to criticise or comment boldly on the policies of the Government which are wrong or which have adverse repercussions on public interest?

In a seminar held in May, 1970, at Srinagar, the topic for discussion was "Freedom of Press in India". A number of eminent newspaper editors took part therein. Mr. I. K. Gujral, Minister of State for Information and Broadcasting, also took part in the seminar. Mr. Frank Moraes, who was an ornament to journalism in India, was also one of the participants. He said: "If Mr. Gujral is against monopoly, then he must be for free competition. But is he? According to official statistics, he controls, and controls exclusively, the largest instrument, All India Radio, in the field of mass communication in this country. This makes him or the Government he represents the biggest monopolist of mass communications in India". Bearing in mind that the percentage of literacy in India is 30 and that the radio reaches not less than 70 per cent of the population, it would be obvious that the news read at slow speed on All India Radio which is usually relied on by the Indian language Press is spread far more widely over the country than the bigger newspapers can reach. Anyone who has listened to the news read at slow speed and to the news bulletins of A. I. R. in different languages, a number of times during the day, will realise that the news broadcast is either slanted or that it conveniently omits important and significant events to suit the Government policy. From this the conclusion is irresistible that there is a far wider concentration of power in the hands of the All India Radio, which is the same thing as the Government, than in the so-called monopoly Press. It will be remembered that the high-power committee appointed some years ago headed by Mr. A. K. Chanda, the former Comptroller and Auditor-General of India, to report on the functioning and future of the A. I. R. had strongly advocated the establishment of an independent corporation for managing the All India Radio. This suggestion was in line with the establishment in Great Britain of the British Broadcasting Corporation which is a body completely independent of the Government. This suggestion has conveniently been assigned to the limbo of forgotten things by the Government and speaks volumes for the Government's hypocritical protestation that the All India Radio is a free organ!

It seems that our present-day rulers have forgotten Pandit Jawaharlal Nehru's views on the subject. He had said: "I have no doubt that even if the Government dislikes the liberties taken by the Press and considers them dangerous, it is wrong to interfere with the freedom of the Press". Again, addressing the All-India Newspaper Editors' Conference in 1950, he observed: "I would rather have a completely free Press with all the dangers involved in the wrong use of that freedom than a suppressed or a regulated Press".

All this shows that despite his distrust of the so-called capitalist Press, Nehru had so unshakable a democratic conviction that he never dreamt of taking a step that would infringe the freedom of the Press.

To sum up, we are the proud inheritors of so valuable a freedom as the freedom of the Press. The area of freedom which we enjoy is quite large indeed and the restraints that have been placed by law on the exercise of that freedom are neither too many nor too onerous. They are perhaps the barest minimum that any civilised society should impose on the exercise of such a right. An objective assessment of the enforcement of Press laws by Governments in this country would reveal that they have been circumspect in their handling of the Press. Indeed, journalists of international repute have testified to the existence of a large amount of freedom of

Press in this country. The only disconcerting feature of the present situation is the unfortunate manner in which some, perhaps most, State Governments seek to cower the Press in an extra-legal manner. Taking advantage of the tight financial position in which small newspapers are placed, some Governments have been on the one hand placating them by doling out liberally large chunks of advertisements and, on the other, starving the bigger ones of advertisements. The policy in either case is short-sighted and is not likely to yield the dividends that the Governments expect. Those in authority may feel somewhat frustrated with the decisions of the Supreme Court when it struck down as unconstitutional the laws made in the name of containing monopolies. No one, I am sure, who takes an objective and a long-term view of the matter would say that the Court has taken a narrow view. The emphatic manner in which the learned Chief Justice of India (Mr. Justice A. N. Ray) has upheld the freedom of the Press in *Bennet Coleman's case* would go down in the history of freedom of Press in this country as an illuminating landmark. Unless some day Parliament attempts to get over this decision by amending the Constitution, the Press freedom in this country can be regarded as having been firmly established.

Courts in this country are well aware of the maxim that justice is not a cloistered virtue. To quote Lord Atkin: "The path of criticism is a public way; the wrong-headed are permitted to err. Therein Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectfulness through outspoker comments of ordinary men". The courts have consistently and true to tradition forgiven the misguided journalist unless the misdemeanour committed by him is found to be so gross as to bring the administration of justice into contempt and ridicule. In our country contempt cases are few and so our newspapers do not appear to be in dread of being hauled up for contempt of court as they appear to be in a country like England.

The area in which the newspaper treads warily is the one relating to Parliamentary privilege. In this no man's land, the fear of being hauled up before the Bar of the Legislature makes a newspaper say much less than what it might want to do. As the Press Commission has observed, the legislatures in this country are oversensitive and this has made the position of the Press all the more difficult. Repeated attempts by various organisations to press the legislatures to demarcate the contours of this law have had little or no effect. There are very few conventions in this field, and little or no regard is paid to the doctrine of precedent either from legislatures in our country or abroad.

A percipient recommendation of the Press Commission is the one relating to the establishment of the Press Council. It is to the Press Council that the journalist, the proprietor, the Government and the ordinary newspaper reader can look up to for safeguarding the freedom of the Press. It is only the Press Council that can say with authority, without fear of anyone, whether there is a monopoly in the Press industry or not. It is the Council and Council alone that can be the guardian of the Press in this country. If at any time the Council chooses to remain dormant, one could say that the freedom of the Press is in danger. The Council should be kept far and away from the din and bustle of politics and so politicians and trade unions should have no place on it. It is not a forum for either of them.

I am indeed grateful to the Calcutta University and all those learned men who presided at each day's meeting and the learned audience who had listened to me with patience.

Thank you all once again.

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'Appendix

THE PRESS AND REGISTRATION OF BOOKS ACT, 1867

ARRANGEMENT OF SECTIONS

PREAMBLE

PART I

Preliminary

SECTIONS

1. Interpretation-clause.
2. [*Repealed.*].

PART II

OF PRINTING-PRESSES AND NEWSPAPERS

3. Particulars to be printed on books and papers.
4. Keeper of printing-press to make declaration.
5. Rules as to publication of newspapers.

5A. Keepers of printing-presses and printers and publishers of newspapers in Jammu and Kashmir to make and subscribe fresh declarations within specified period.

6. Authentication of declaration.
   Deposit.
   Inspection and supply of copies.
7. Office copy of declaration to be *prima facie* evidence.
8. New declaration by persons who have signed a declaration and subsequently ceased to be printers or publishers.
   Authentication and filing.
   Inspection and supply of copies.
   Putting copy in evidence.

8A Person whose name has been incorrectly published as editor may make a declaration before a Magistrate.

8B. Cancellation of declaration.

8C. Appeal.

PART III

DELIVERY OF BOOKS

9. Copies of books printed after commencement of Act to be delivered *gratis* to Government.

SECTIONS

10. Receipt for copies delivered under section 9.
11. Disposal of copies delivered under section 9.
11A. Copies of newspapers printed in India to be delivered *gratis* to Government.
11B. Copies of newspapers to be delivered to Press Registrar.

PART IV

PENALTIES

12. Penalty for printing contrary to rule in section 3.
13. Penalty for keeping press without making declaration required by section 4.
14. Punishment for making false statement.
15. Penalty for printing or publishing newspaper without conforming to rules.
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PART V

REGISTRATION OF BOOKS

18. Registration of memoranda of books.
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PART VA

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19A. Appointment of Press Registrar and other officers.
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20. Power to make rules.
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20A. Power of Central Government to make rules.
20B. Rules made under this Act may provide that contravention thereof shall be punishable.
21. Power to exclude any class of books from operation of Act.
22. Extent.
23. [*Repealed.*]

LIST OF AMENDING ACTS AND ADAPTATION ORDERS

1. The Repealing Act. 1870 (14 of 1870).
2. The Press and Registration of Books Act (1867) Amendment Act, 1890 (10 of 1890).
3. The Amending Act, 1891 (12 of 1891).
4. The Indian Short Titles Act, 1897 (14 of 1897).
5. The Indian Copyright Act, 1914 (3 of 1914).
6. The Repealing and Amending Act, 1914 (10 of 1914).
7. The Repealing and Amending Act, 1915 (11 of 1915).
8. The Devolution Act, 1920 (38 of 1920).
9. The Press Law Repeal and Amendment Act, 1922 (14 of 1922).
10. The Repealing and Amending Act, 1923 (11 of 1923).
11. The Government of India (Adaptation of Indian Laws) Order, 1937.
12. The Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948.
13. The Adaptation of Laws Order, 1950.
14. The Repealing and Amending Act, 1950 (35 of 1950).
15. The Part B States (Laws) Act, 1951 (3 of 1951).
16. The Press (Objectionable Matter) Act, 1951 (56 of 1951).
17. The Press and Registration of Books (Amendment) Act, 1955 (55 of 1955).
18. The Press and Registration of Books (Amendment) Act, 1960 (26 of 1960).
19. The Press and Registration of Books (Amendment) Act, 1965 (16 of 1965).
20. The Press and Registration of Books (Amendment) Act, 1968 (30 of 1968).

THE PRESS AND REGISTRATION OF BOOKS ACT, 1867[1]

25 OF 1867

22nd March, 1867

An Act for the regulation of Printing-presses and Newspapers, for the preservation of copies of books [2]*[and newspapers] printed in* [3]*[India], and for the registration of such books* [2]*[and newspapers].*

WHEREAS it is expedient to provide for the regulation of printing-presses and of [4][newspapers], for the preservation of [5]*** copies of [6][every book and newspaper printed in India and for the registration of such books and newspapers]; It is hereby enacted as follows:—

PART I

PRELIMINARY

1. Interpretation clause.—[7][(*1*)] In this Act, unless there shall be something repugnant in the subject or context,—

"Book" includes every volume, part or division of a volume, and pamphlet, in any language, and every sheet of music, map, chart or plan separately printed [8]***;

[9]*   *   *   *   *   *

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[1] Short title given by the Indian Short Titles Act, 1897 (14 of 1897).

[2] Ins. by Act 55 of 1955, s. 2 (w.e.f. 1-7-1956).

[3] Subs. by Act 3 of 1951, s. 3 and Sch., for "the whole of India except Part B States".

[4] Subs. by Act 35 of 1950, s. 3 and Sch. II, for "periodicals containing news".

[5] The word "three" omitted by Act 10 of 1890, s. 1.

[6] Subs. by Act 55 of 1955, s. 3 for "every book printed or lithographed in India and for the registration of such books" (w.e.f. 1-7-1956).

[7] S. 1 re-numbered as sub-section (*1*) thereof by Act 16 of 1965, s. 2 (w.e.f. 1-11-1965).

[8] The words "or lithographed" omitted by Act 55 of 1955, s. 4 (w.e.f. 1-7-1956).

[9] Definition of "British India" rep. by the A.O. 1937, *see* now the definition in s. 3(5) of the General Clauses Act, 1897 (10 of 1897).

[10][“editor” means the person who controls the selection of the matter that is phblished in a newspaper ;]

[11]* * * * *

“Magistrate” means any person exercising the full powers of a [12]Magistrate, and includes a [13]Magistrate of police [14]* * * ;

[15][“newspaper” means any printed periodical work containing public news or comments on public news ;]

[16]* * * * * *

[17][“paper” means any document, including a newspaper, other than a book ;

“prescribed” means prescribed by rules made by the Central Government under section 20A ;

“Press Registrar” means the Registrar of newspapers for India appointed by the Central Government under section 19A and includes any other person appointed by the Central Government to perform all or any of the functions of the Press Registrar ;

“printing” includes cyclostyling and printing by lithography ;

“Register” means the Register of newspapers maintained under section 19B.]

[18][(2) Any reference in this Act to any law which is not in force in the State of Jammu and Kashmir shall, in relation to that State, be construed as a reference to the corresponding law in force in that State.]

2. [*Repeal of Act* 11 *of* 1835] *Rep. by the Repealing Act*, 1870 (14 *of* 1870), *s.* 1 *and Sch., Pt.II.*

PART II

OF PRINTING-PRESSES AND NEWSPAPERS

3. Particulars to be printed on books and papers.—Every book

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10 Ins. by Act 14 of 1922, s. 3 and Sch. I.

11 Definition of “India” omitted by Act 16 of 1965, s. 2 (w.e.f. 1-11-1965).

12 Now Magistrate of the first class, *see* the Code of Criminal Procedure, 1398 (5 of 1898).

13 Now Presidency Magistrate, *see* Act 5 of 1898.

14 The words “and a Justice of the Peace” rep. by Act 10 of 1890, s., 2.

15 Ins. by Act 14 of 1922, s. 3 and Sch. I.

16 Paragraphs relating to the definitions of “Number” anl “Gender” rep. by Act 10 of 1914 s. 3 and Sch. II ; definition of “Local Government” rep. by the A. O. 1937 and the definition of “States” ins. by the A. O. 1950 was rep. by Act 3 of 1951, s. 3 and Sch.

17 Ins. by Act 55 of 1955, s. 4 (w.e.f. 1-7-1956).

18 Ins. by Act 16 of 1965, s. 2 (w.e.f. 1-11-1965).

or paper printed within [19][India] shall have printed legibly on it the name of the printer and the place of printing, and (if the book or paper be published) [20][the name] of the publisher, and the place of publication.

4. Keeper of printing-press to make declaration.—[[1](*1*)] No person shall, within [19][India], keep in his possession any press for the printing of books or papers who shall not have made and subscribed the following declaration before [2][the District, Presidency or Sub-Divisional Magistrate] within whose local jurisdiction such press may be:

"I, A. B., declare that I have a press for printing at—."

And this last blank shall be filled up with a true and precise description of the place where such press may be situate.

[3][(*2*)] As often as the place where a press is kept is changed, a new declaration shall be necessary:

Provided that where the change is for a period not exceeding sixty days and the place where the press is kept after the change is within the local jurisdiction of the Magistrate referred to in sub-section (*1*), no new declaration shall be necessary if—

(*a*) a statement relating to the change is furnished to the said Magistrate within twenty-four hours thereof; and

(*b*) the keeper of the press continues to be the same.]

5. Rules as to publication of newspapers.—No [4][newspaper] shall be published in [[5]India], except in conformity with the rules hereinafter laid down:

[6][(*1*) Without prejudice to the provisions of section 3, every copy of every such newspaper shall contain the names of the owner and editor thereof printed clearly on such copy and also the date of its publication.]

[7][(*2*)] The printer and the publisher of every such [8][news-

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19 Subs. by Act 3 of 1951, s. 3 and Sch., for "the States".

20 Ins. by Act 12 of 1891, s. 2 and Sch. II, Pt. I.

1 S. 4 re-numbered as sub-section (*1*) of that section by Act 55 of 1955, s. 5 (w.e.f. 1-7-1956).

2 Subs. by Act 56 of 1951, s. 36, for "the Magistrate" (w.e.f. 1-2-1952).

3 Ins. by Act 55 of 1955, s. 5 (w.e.f. 1-7-1956).

4 Subs. by Act 14 of 1922, s. 3 and Sch. I, for certain words.

5 Subs. by Act 3 of 1951, s. 3 and Sch., for "the States".

6 Subs. by Act 26 of 1960, s. 2, for rule (*1*) (w.e.f. 1-10-1960) which was ins. by Act 14 of 1922, s. 3 and Sch. I.

7 Rule (*1*) re-numbered as rule (2) by Act 14 of 1922, s. 3 and Sch. I.

8 Subs. by s. 3 and Sch. I, *ibid*, for "periodical work".

paper] shall appear [7][in person or by agent authorised in this behalf in accordance with rules made under section 20, before a District, Presidency or Sub-Divisional Magistrate within whose local jurisdiction such newspaper shall be printed or published [9][* * *], and shall make and subscribe, in duplicate, the following declaration:

"I, A B., declare, that I am the printer (*or* publisher, *or* printer and publisher) of the [8][newspaper] entitled——[10][and to be printed or published, or to be printed and published], *as the case may be* at——".

And the last blank in this form of declaration shall be filled up with a true and precise account of the premises where the printing or publication is conducted.

[11][(*2A*) Every declaration under rule (*2*) shall specify the title of the newspaper, the language in which it is to be published and the periodicity of its publication and shall contain such other particulars as may be prescribed.]

[12][(*2B*) Where the printer or publisher of newspaper making a declaration under rule(*2*) is not the owner thereof, the declaration shall specify the name of the owner and shall also be accompanied by an authority in writing from the owner authorising such person to make and subscribe such declaration.

(*2C*) A declaration in respect of a newspaper made under rule (*2*) and authenticated under section 6 shall be necessary before the newspaper can be published.

(*2D*) Where the title of any newspaper or its language or the periodicity of its publication is changed, the declaration shall cease to have effect and a new declaration shall be necessary before the publication of the newspaper can be continued.

(*2E*) As often as the ownership of a newspaper is changed, a new declaration shall be necessary.]

[13][(*3*)] As often as the place of printing or publication is changed, a new declaration shall be necessary:

[14][Provided that where the change is for a period not exceeding thirty days and the place of printing or publication after the change is within the local jurisdiction of the

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9 The words, "or such printer or publisher resides", omitted by Act 26 of 1960, s. (w.e.f. 1-10-1960).

10 Subs. by Act 55 of 1955, s. 6, for certain words (w.e.f. 1-7-1956).

11 Ins. by s. 6, *ibid.*

12 Ins. by Act 26 of 1960, s. 2 (w.e.f. 1-10-1960).

13 Rule (2) re-numbered as rule (*3*) by Act 14, of 1922, s. 3 and Sch. I.

14 Ins. by Act 55 of 1955, s. 6 (w.e.f. 1-7-1956).

Magistrate referred to in rule (2), no new declaration shall be necessary if—

(*a*) a statement relating to the change is furnished to the said Magistrate within twenty-four hours thereof; and

(*b*) the printer or publisher or the printer and publisher of the newspaper continues to be the same.]

[15][(*4*) As often as the printer or the publisher who shall have made such declaration as is aforesaid shall leave India for a period exceeding ninety days or where such printer or publisher is by infirmity or otherwise rendered incapable of carrying out his duties for a period exceeding ninety days in circumstances not involving the vacation of his appointment, a new declaration shall be necessary.]

[16][(*5*) Every declaration made in respect of a newspaper shall be void, where the newspaper does not commence publication.—

(*a*) within six weeks [17][of the authentication of the declaration under section *6*], in the case of a newspaper to be published once a week or oftener; and

(*b*) within three months [18][of the authentication of declaration under section *6*], in the case of any other newspaper,

and in every such case, a new declaration shall be necessary before the newspaper can be published.

(*6*) Where, in any period of three months, any daily, tri-weekly, bi-weekly, weekly or fortnightly newspaper publishes issues the number of which is less than half of what should have been published in accordance with the declaration made in respect thereof, the declaration shall cease to have effect and a new declaration shall be necessary before the publication of the newspaper can be continued.

(*7*) Where any other newspaper has ceased publication for a period exceeding twelve months, every declaration made in respect thereof shall cease to have effect, and a new declaration shall be necessary before the newspaper can be re-published.

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[15] Subs. by Act 26 of 1960, s. 2 for rule (*4*) (w.e.f. 1-10-1960) which had been re-numbered for the original rule (*3*) by Act 14 of 1922, s. 3 and Sch. I.

[16] Ins. by Act 55 of 1955, s. 6 (w.e.f. 1-7-1956).

[17] Subs. by Act 26 of 1960, s. 2, for "of the declartion" (w.e.f. 1-10-1960).

[18] Subs. by Act 26 of 1960, s. 2, for "of the declaration" (w.e.f. 1-10-1960).

(*8*) Every existing declaration in respect of a newspaper shall be cancelled by the Magistrate before whom a new declaration is made and subscribed in respect of the same:]

[19][Provided that no person [20][who does ordinarily reside in India, or] who has not attained majority in accordance with the provisions of the Indian Majority Act, 1875, or of the law to which he is subject in respect of the attainment of majority, shall be permitted to make the declaration prescribed by this section, nor shall any such person edit a newspaper.]

[1]**5A. Keepers of printing-presses and printers and publishers of newspapers in Jammu and Kashmir to make and subscribe fresh declarations within specified period.**—(*1*) No person who has made and subscribed a declaration in respect of any press under section 4 of the Jammu and Kashmir State Press and Publications Act, S. 1989 shall keep the press in his possession for the printing of books or papers [2][after the 31st day of December, 1968, unless before the expiry of that date] he makes and subscribes a fresh declaration in respect of that press under section 4 of this Act.

(2) Every person who has subscribed to any declaration in respect of a newspaper under section *5* of the Jammu and Kashmir State Press and Publications Act, S. 1989 shall cease to be the editor, printer or publisher of the newspaper mentioned in such declaration [2][after the 31st day of December, 1968, unless before the expiry of that date] he makes and subscribes a fresh declaration in respect of that newspaper under rule (2) of the rules laid down in section 5 of this Act.]

6. Authentication of declaration.—Each of the two originals of every declaration so made and subscribed as is aforesaid, shall be authenticated by the signature and official seal of the Magistrate before whom the said declaration shall have been made:

[3][Provided that where any declaration is made and subscribed under section *5* in respect of a newspaper, the declaration shall not, save in the case of newspapers owned by the same person, be so authenticated unless the Magistrate [4][is, on inquiry from the Press Registrar, satisfied] that the newspaper proposed to be published does not bear a title which

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[19] Ins. by Act 14 of 1922, s. 3 and Sch. I.

[20] Ins. by Act 26 of 1960, s. 2 (w.e.f. 1-10-1960).

[1] Ins. by Act 16 of 1965, s. 3 (w.e.f. 1-11-1965).

[2] Subs. by Act 33 of 1968, s. 2, for certain words (retrospectively).

[3] Ins. by Act 55 of 1955, s. 7 (w.e.f. 1-7-1956).

[4] Subs. by Act 26 of 1960, s. 3 for certain words (w.e.f. 1-10-1960).

is the same as, or similar to, that of any other newspaper published either in the same language or in the same State.]

Deposit.—One of the said originals shall be deposited among the records of the office of the Magistrate, and the other shall be deposited among the records of the High Court of Judicature, or [5][other principal Civil Court of original jurisdiction for the place where] the said declaration shall have been made.

Inspection and supply of copies.—The Officer-in-charge of each original shall allow any person to inspect that original on payment of a fee of one rupee, and shall give to any person applying a copy of the said declaration, attested by the seal of the Court which has the custody of the original, on payment of a fee of two rupees.

[6][A copy of the declaration attested by the official seal of the Magistrate, or a copy of the order refusing to authenticate the declaration, shall be forwarded as soon as possible to the person making and subscribing the declaration and also to the Press Registrar.]

7. Office copy of declaration to be prima facie evidence.—In any legal proceeding whatever, as well as civil and criminal, the production of a copy of such declaration as is aforesaid, attested by the seal of some Court empowered by this Act to have the custody of such declarations, [9][or, in the case of the editor, a copy of the newspaper containing his name printed on it as that of the editor] shall be held (unless the contrary be proved) to be sufficient evidence, as against the person whose name shall be subscribed to such declaration, [7][or printed on such newspaper as the case may be] that the said person was printer or publisher, or printer and publisher (according as the words of the said declaration may be) of every portion of every [8][newspaper] whereof the title shall correspond with the title of the [8][newspaper] mentioned in the declaration [9][or the editor of every portion of that issue of the newspaper of which a copy is produced.]

8. New declaration by persons who have signed a declaration and subsequently ceased to be printers or publishers.—[10][If any person has subscribed to any declaration in respect of a newspaper under section 5 and the declaration has been authenticated by a Magistrate under section 6 and subsequently that person ceases to be the printer or publisher of the newspaper mentioned in such declaration, he shall appear before any District, Presidency or Sub-Divisional Magistrate, and make and subscribe in duplicate the following declaration:—

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[5] Subs. by Act 10 of 1890, s. 3, for certain words.

[6] Subs. by Act 26 of 1960, s. 3, for the fourth paragraph (w.e.f. 1-10-1960) which was ins. by Act 55 of 1955, s. 7 (w.e.f. 1-7-1956).

[7] Ins. by Act 14 of 1922, s. 3 and Sch. I.

[8] Subs. by s. 4 and Sch. I, *ibid.*, for "periodical work."

[9] Ins. by s. 3 and Sch. I, *ibid.*

[10] Subs. by Act 55 of 1955, s. 8, for the first paragraph (w.e.f. 1-7-1956).

'I, A. B., declare that I have ceased to be the printer or publisher or printer and publisher of the newspaper entitled——'.]

Authentication and filing.—Each original of the latter declaration shall be authenticated by the signature and seal of the Magistrate before whom the said latter declaration shall have been made, and one original of the said latter declaration shall be filed along with each original of the former declaration.

Inspection and supply of copies.—The Officer-in-charge of each original of the latter declaration shall allow any person applying to inspect that original on payment of a fee of one rupee, and shall give to any person applying a copy of the said latter declaration, attested by the seal of the Court having custody of the original, on payment of a fee of two rupees.

Putting copy in evidence.—In all trials in which a copy, attested as is aforesaid, of the former declaration shall have been put in evidence, it shall be lawful to put in evidence a copy, attested as is aforesaid, of the latter declaration, and the former declaration shall not be taken to be evidence that the declarant was, at any period subsequent to the date of the latter declaration, printer or publisher of the [1][newspaper] therein mentioned.

[11][A copy of the latter declaration attested by the official seal of the Magistrate shall be forwarded to the Press Registrar.]

[12][**8A. Person whose name has been incorrectly published as editor may make a declaration before a Magistrate.**—If any person, whose name has appeared as editor on a copy of a newspaper, claims that he was not the editor of the issue on which his name has so appeared, he may, within two weeks of his becoming aware that his name has been so published, appear before a District, Presidency or Sub-Divisional Magistrate and make a declaration that his name was incorrectly published in that issue as that of the editor thereof, and if the Magistrate after making such inquiry or causing such inquiry to be made as he may consider necessary is satisfied

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[11] Ins. by s. 8, *ibid*. (w.e.f. 1-7-1956).

[12] Ins. by Act 14 of 1922.

that such declaration is true, he shall certify accordingly, and on that certificate being given the provisions of section 7 shall not apply to that person in respect of that issue of the newspaper.

The Magistrate may extend the period allowed by this section in any case where he is satisfied that such person was prevented by sufficient cause from appearing and making the declaration within that period.]

[12a][**8B. Cancellation of declaration.**—If, on an application made to him by the Press Registrar or any other person or otherwise, the Magistrate empowered to authenticate a declaration under this Act, is of opinion that any declaration made in respect of a newspaper should be cancelled, he may, after giving the person concerned an opportunity of showing cause against the action proposed to be taken, hold an inquiry into the matter and if, after considering the cause, if any, shown by such person and after giving him an opportunity of being heard, he is satisfied that—

(*i*) the newspaper, in respect of which the declaration has been made is being published in contravention of the provisions of this Act or rules made thereunder ; or

(*ii*) the newspaper mentioned in the declaration bears a title which is the same as, or similar to, that of any other newspaper published either in the same language or in the same State ; or

(*iii*) the printer or publisher has ceased to be the printer or publisher of the newspaper mentioned in surh declaration ; or

(*iv*) the declaration was made on false representation or on the concealment of any material fact or in respect of a periodical work which is not a newspaper ;

the Magistrate may, by order, cancel the declaration and shall forward as soon as possible a copy of the order to the person making or subscribing the declaration and also to the Press Registrar.

8C. Appeal.—(*1*) Any person aggrieved by an order of a Magistrate refusing to authenticate a declaration under section 6 or cancelling a declaration under section 8B may, within sixty days from the date on which such order is communicated to him, prefer an appeal to the Appellate Board to be called the Press and Registration Appellate Board consisting of a

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[12a] Ins. by Act 26 of 1960, s. 4 (w.e.f. 1-10-1960).

Chairman and another member to be appointed by the Central Government:

Provided that the Appellate Board may entertain an appeal after the expiry of the said period, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(*2*) On receipt of an appeal under this section, the Appellate Board may, after calling for the records from the Magistrate and after making such further inquiries as it thinks fit, confirm, modify or set aside the order appealed against.

(*3*) Subject to the provisions contained in sub-section (2), the Appellate Board may, by order, regulate its practice and procedure.

(*4*) The decision of the Appellate Board shall be final.]

[13][PART III

DELIVERY OF BOOKS

9. Copies of books printed after commencement of Act to be delivered gratis to Government.—Printed [14]* * * copies of the whole of every book which shall be printed [14]* * * in [15][India] after this Act shall come into force, together with all maps, prints or other engravings belonging thereto, finished and coloured in the same manner as the best copies of the same, shall, notwithstanding any agreement (if the book be published) between the printer and publisher thereof, be delivered by the printer at such place and to such officer as the State Government shall, by notification in the Official Gazette, from time to time direct, and free of expense to the Government as follows, that is to say:—

(*a*) in any case, within one calendar month after the day on which any such book shall first be delivered out of the press, one such copy, and,

(*b*) if within one calendar year from such day the State Government shall require the printer to deliver other such copies not exceeding two in number, then within one calendar month after the day on which any such requisition shall be made by the State Government on the printer, another such copy, or two other such copies, as the State Government may direct, the copies so delivered being bound, sewed or stitched together and upon the best paper on which any copies of the book shall be printed [14]* * *.

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[13] Subs. by Act 10 of 1890, s. 4, for the original Part III.

[14] The words "or lithographed" omitted by Act 55 of 1955, s. 9 (w.e.f. 1-7-1956).

[15] Subs. by Act 3 of 1951, s. 3 and Sch., for "the States".

The publisher or other person employing the printer shall, at a reasonable time before the expiration of the said month, supply him with all maps, prints and engravings finished and coloured as aforesaid, which may be necessary to enable him to comply with the requirements aforesaid.

Nothing in the former part of this section shall apply to—

(*i*) any second or subsequent edition of a book in which edition no additions or alterations either in the letter-press or in the maps, prints or other engravings belonging to the book have been made, and a copy of the first or some preceding edition of which book has been delivered under this Act, or

(*ii*) any [1][newspaper] published in conformity with the rules laid down in section 5 of this Act.

10. Receipt for copies delivered under section 9.—The officer to whom a copy of a book is delivered under the last foregoing section shall give to the printer a receipt in writing therefor.

11. Disposal of copies delivered under section 9.—The copy delivered pursuant to clause (*a*) of the first paragraph of section 9 of this Act shall be disposed of as the State Government shall from time to time determine.

Any copy or copies delivered pursuant to clause (*b*) of the said paragraph shall be [2][transmitted to the Central Government].]

[3][**11A. Copies of newspapers printed in India to be delivered gratis to Government.**—The printer of every newspaper in [4][India] shall deliver at such place and to such officer as the State Government may, by notification in Official Gazette, direct, and free of expense to the Government, two copies of each issue of such newspaper as soon as it is published.]

[5][**11B. Copies of newspapers to be delivered to Press Registrar.**—Subject to any rules that may be made under this Act, the publisher of every newspaper in India shall deliver free of expense to the Press Registrar one copy of each issue of such newspaper as soon as it is published.]

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1 Subs. by Act 14 of 1922, s. 3 and Sch. I, for "periodical work".

2 Subs. by the A. O. 1948, for certain words.

3 Ins. by Act 14 of 1922, s. 3 and Sch. I.

4 Subs. by Act 3 of 1951, s. 3 and Sch., for "the States".

5 Ins. by Act 55 of 1955, s. 10 (w.e.f. 1-7-1956).

PART IV

PENALTIES

12. Penalty for printing contrary to rule in section 3.—Whoever shall print or publish any book or paper otherwise than in conformity with the rule contained in section *3* of this Act, shall, on conviction before a Magistrate, be punished by fine not exceeding [6][two thousand] rupees, or by simple imprisonment for a term not exceeding [7][six months], or by both.

13. Penalty for keeping press without making declaration required by section 4.—Whoever shall keep in his possession any such press as aforesaid, [8][in contravention of any of the provisions contained in section *4* of this Act], shall, on conviction before a Magistrate, be punished, by fine not exceeding [6][two thousand] rupees, or by simple imprisonment for a term not exceeding [7][six months], or by both.

14. Punishment for making false statement.—Any person who shall, in making [9][any declaration or other statement] under the authority of this Act, make a statement which is false, and which he either knows or believes to be false, or does not believe to be true, shall, on conviction before a Magistrate, be punished by fine not exceeding [10][two thousand] rupees, and imprisionment for a term not exceeding [11][six months.].

15. Penalty for printing or publishing newspaper without conforming to rules.—[12][(1)] Whoever shall [13][edit], print or publish any [14][newspaper], without conforming to the rules hereinbefore laid down, or whoever shall [13][edit], print or publish, or shall cause to be [13][edited], printed or published, any [15][newspaper], knowing that the rules have not been observed with respect to [16][that newspaper], shall on conviction before

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6 Subs. by Act 14 of 1922, s. 3 and Sch. I, for "five thousand".

7 Subs. by s. 3 and Sch. I, *ibid.*, for "two years".

8 Subs. by Act 55 of 1955, s. 11, for "without making such a declaration as is required by section 4 of this Act" (w.e.f. 1-7-1956).

9 Subs. by Act 55 of 1955, s. 12 for "any declaration" (w.e.f. 1-7-1956).

10 Subs. by Act 14 of 1922, s. 3 and Sch. I, for "five thousand".

11 Subs. by s. 3 and Sch. I, *ibid.*, for "two years".

12 S. 15 re-numbered as sub-section (*1*) of that section by Act 26 of 1960, s. 5 (w.e.f. 1-10-1960).

13 Ins. by Act 14 of 1922, s. 3 and Sch. I.

14 Subs. by s. 3 and Sch. I, *ibid.*, for "such periodical work as is hereinbefore described".

15 Subs. by s. 3 and Sch. I, *ibid.*, for "such periodical work".

a Magistrate, be punished with fine not exceeding [16][two thousand] rupees, or imprisonment for a term not exceeding [16][six months] or both.

[17][(2) Where an offence is committed in relation to a newspaper under sub-section (1), the Magistrate may, in addition to the punishment imposed under the said sub-section, also cancel the declaration in respect of the newspaper.]

[18](**15A. Penalty for failure to make a declaration under section 8.**—If any person who has ceased to be a printer or publisher of any newspaper fails or neglects to make a declaration in compliance with section *8*, he shall, on conviction before a Magistrate, be punishable by fine not exceeding two hundred rupees.]

[19](**16. Penalty for not delivering books or not supplying printer with maps.**—If any printer of any such book as is referred to in section *9* of this Act shall neglect to deliver copies of the same pursuant to that section, he shall for every such default forfeit to the Government such sum not exceeding fifty rupees as a Magistrate having jurisdiction in the place where the book was printed may, on the application of the officer to whom the copies should have been delivered or of any person authorised by that officer in this behalf, determine to be in the circumstances a reasonable penalty for the default, and, in addition to such sum, such further sum as the Magistrate may determine to be the value of the copies which the printer ought to have delivered.

If any publisher or other person employing any such printer shall neglect to supply him, in the manner prescribed in the second paragraph of section 9 of this Act with the maps, prints or engravings which may be necessary to enable him to comply with the provisions of that section, such publisher or other person shall for every such default forfeit to the Government such sum not exceeding fifty rupees as such a Magistrate as aforesaid may, on such an application as aforesaid, determine to be in the circumstances a reasonable penalty for the default, and, in addition to such sum, such further sum as the Magistrate may determine to be the value of the maps, prints or engravings which such publisher or other person ought to have supplied.

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16 Subs. by s. 3 and Sch. I, *ibid.*, for "that work".

17 Ins. by Act 26 of 1960, s. 5 (w.e.f. 1-10-1960).

18 Ins. by Act 55 of 1955, s. 13 (w.e.f. 1-7-1956).

19 Subs. by Act 10 of 1890, s. 5, for the former ss. 16 and 17.

[1][**16A. Penalty for failure to supply copies of newspapers gratis to Government.**—If any printer of any newspaper published in [2][India] neglects to deliver copies of the same in compliance with section 11A, he shall, on the complaint of the officer to whom copies should have been delivered or of any person authorised by that officer in this behalf, be punishable, on conviction by a Magistrate having jurisdiction in the place where the newspaper was printed, with fine which may extend to fifty rupees for every default.]

[3][**16B. Penalty for failure to supply copies of newspapers to Press Registrar.**—If any publisher of any newspaper published in India neglects to deliver copies of the same in compliance with section 11B, he shall, on the complaint of the Press Registrar, be punishable, on conviction by a Magistrate having jurisdiction in the place where the newspaper was printed, by fine which may extend to fifty rupees for every default.]

17. Recovery of forfeitures and disposal thereof and of fines.—Any sum forfeited to the Government under [4][section 16] may be recovered, under the warrant of the Magistrate determining the sum, or of his successor in office, in the manner authorised by the [5]Code of Criminal Procedure (10 of 1882) for the time being in force, and within the period prescribed by the Indian Penal Code, for the levy of a fine.

* * * * * *][6]

PART V

REGISTRATION OF BOOKS

18. Registration of memoranda of books.—There shall be kept at such office, and by such officer as the State Government shall appoint in this behalf, a book to be called a Catalogue of Books printed in [2][India], wherein shall be registered a memorandum of every book which shall have been delivered [7][pursuant to clause (*a*) of the first paragraph of section 9] of this Act. Such memorandum shall (so far as may be practicable) contain the following particulars (that is to say):—

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[1] Ins. by Act 14 of 1922, s. 3 and Sch. I.

[2] Subs. by Act 3 of 1951, s. 3 and Sch., for "the States".

[3] Ins. by Act 55 of 1955, s. 14 (w.e.f. 1-7-1956).

[4] Subs. by Act 11 of 1923, s. 2 and Sch. 1, for "the last foregoing section".

[5] *See* now the Code of Criminal Procedure, 1898 (5 of 1898).

[6] The 2nd paragraph rep. by the A. O. 1937.

[7] Subs. by Act 10 of 1890, s. 6, for "pursuant to section 9".

(*1*) the title of the book and the contents of the title-page, with a translation into English of such title and contents, when the same are not in the English language ;

(*2*) the language in which the book is written ;

(*3*) the name of the author, translator, or editor of the book or any part thereof ;

(*4*) the subject ;

(*5*) the place of printing and the place of publication ;

(*6*) the name or firm of the printer and the name or firm of the publisher ;

(*7*) the date of issue from the press or of the publication ;

(*8*) the number of sheets, leaves or pages ;

(*9*) the size ;

(*10*) the first, second or other number of the edition ;

(*11*) the number of copies of which the edition consists ;

(12) whether the book is printed [8][cyclostyled or lithographed] ;

(*13*) the price at which the book is sold to the public ; and

(*14*) the name and residence of the proprietor of the copyright or of any portion of such copyright.

Such memorandum shall be made and registered in the case of each book as soon as practicable after the delivery of the [9][copy thereof pursuant to clause (*a*) of the first paragraph of section 9] [10]* * *.

19. Publication of memoranda registered.—The memoranda registered during each quarter in the said Catalogue shall be published in the Official Gazette, as soon as may be after the end of such quarter, and a copy of the memoranda so published shall be sent [11]* * *to the Central Government [12]* * *.

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[8] Subs. by Act 55 of 1955, s. 15, for "or lithographed" (w.e.f. 1-7-1956).

[9] Subs. by Act 10 of 1890, s. 6, for "copies thereof in manner aforesaid".

[10] Last sentence of s. 18 rep. by Act 3 of 1914, s. 15 and Sch. II.

[11] The words "to the said Secretary of State, and" rep. by the A. O. 1948.

[12] The word "respectively" omitted, *ibid.*

[13][PART VA

REGISTRATION OF NEWSPAPERS

19A. Appointment of Press Registrar and other officers.—The Central Government may appoint a Registrar of newspapers for India and such other officers under the general superintendence and control of the Press Registrar as may be necessary for the purpose of performing the functions assigned to them by or under this Act, and may, by general or special order, provide for the distribution or allocation of functions to be performed by them under this Act.

19B. Register of newspapers.—(*1*) The Press Registrar shall maintain in the prescribed manner a Register of newspapers.

(*2*) The Register shall, as far as may be practicable, contain the following particulars about every newspaper published in India, namely:—

(*a*) the title of the newspaper ;
(*b*) the language in which the newspaper in published ;
(*c*) periodicity of the publication of 'the newspaper ;
(*d*) the name of the editor, printer and publisher of the newspaper ;
(*e*) the place of printing and publication ;
(*f*) the average number of pages per week ;
(*g*) the number of days of publication in the year ;
(*h*) the average number of copies printed, the average number of copies sold to the public and the average number of copies distributed free to the public, the average being calculated with reference to such period as may be prescribed ;
(*i*) retail selling price per copy ;
(*j*) the names and addresses of the owners of the newspaper and such other particulars relating to ownership as may be prescribed ;
(*k*) any other particulars which may be prescribed.

(*3*) On receiving information from time to time about the aforesaid particulars, the Press Registrar shall cause relevant entries to be made in the Register and may make such necessary alterations or corrections therein as may be required for keeping the Register upto date.

19C. Certificates of registration.—On receiving from the Magistrate under section 6 a copy of the declaration in respect of a newspaper, [14][and on the publication of such newspaper, the Press Registrar shall], as soon as practicable thereafter, issue a certificate of registration in respect of that newspaper to the publisher thereof.

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[13] Part VA containing ss. 19A to 19L ins. by Act 55 of 1955, s. 16 (w.e.f. 1-7-1956).

19D. Annual statement, etc., to be furnished by newspapers.—It shall be the duty of the publisher of every newspaper—

(*a*) to furnish to the Press Registrar an annual statement in respect of the newspaper at such time and containing such of the particulars referred to in sub-section (*2*) of section *19*B as may be prescribed ;

(*b*) to publish in the newspaper at such times and such of the particulars relating to the newspaper referred to in sub-section (*2*) of section *19*B as may be specified in this behalf by the Press Registrar.

19E. Returns and reports to be furnished by newspapers.—The publisher of every newspaper shall furnish to the Press Registrar such returns, statistics and other information with respect to any of the particulars referred to in sub-section (*2*) of section *19*B as the Press Registrar may from time to time require.

19F. Right of access to records and documents.—The Press Registrar or any gazetted officer authorised by him in writing in this behalf shall, for the purpose of the collection of any information relating to a newspaper under this Act, have access to any relevant record or document relating to the newspaper in the possession of the publisher thereof, and may enter at any reasonable time any premises where he believes such record or document to be and may inspect or take copies of the relevant records or documents or ask any question necessary for obtaining any information required to be furnished under this Act.

19G. Annual report.—The Press Registrar shall prepare, in such form and at such time each year as may be prescribed, an annual report containing a summary of the information obtained by him during the previous year in respect of the newspapers in India and giving an account of the working of such newspapers, and copies thereof shall be forwarded to the Central Government.

19H. Furnishing of copies of extracts from Register.—On the application of any person for the supply of the copy of any extract from the Register and on payment of such fee as may be prescribed, the Press Registrar shall furnish such copy to the applicant in such form and manner as may be prescribed.

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[14] Subs. by Act 26 of 1960, s. 6, for certain words (w.e.f. 1-10-1960).

19I. Delegation of powers.—Subject to the provisions of this Act and regulations made thereunder, the Press Registrar may delegate all or any of his powers under this Act to any officer subordinate to him.

19J. Press Registrar and other officers to be public servants.—The Press Registrar and all officers appointed under this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860 (45 of 1860).

19K. Penalty for contravention of section 19D or section 19E. etc.—If the publisher of any newspaper—

(*a*) refuses or neglects to comply with the provisions of section 19D or section 19E ; or

[15]* * * * * *

(*c*) publishes in the newspaper in pursuance of clause (*b*) of section 19D any particulars relating to the newspaper which he has reason to believe to be false,

he shall be punishable with fine which may extend to five hundred rupees.

19L. Penalty for improper disclosure of information.—If any person engaged in connection with the collection of information under this Act wilfully discloses any information or the contents of any return given or furnished under this Act otherwise than in the execution of his duties under this Act or for purposes of the prosecution of an offence under this Act or under the Indian Penal Code, 1860, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.]

PART VI

MISCELLANEOUS

20. Power to make rules.—The State Government shall have power to make such rules [16][not inconsistent with the rules made by the Central Government under section 20A] as may be necessary or desirable for carrying out the objects of this Act, and from time to time repeal, alter and add to such rules.

Publication.—All such rules, and all repeals and alterations

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15 Cl. (*b*) omitted by Act 26 of 1960, s. 7 (w.e.f. 1-10-1960).

16 Ins. by Act 55 of 1955, s. 17 (w.e.f. 1-7-1956).

thereof, and additions thereto, shall be published in the Official Gazette.

[17][20A. **Power of Central Government to make rules.**—(*1*) The Central Government may, by notification in the Official Gazette, make rules—

(*a*) prescribing the particulars which a declaration made and subscribed under section 5 may contain ; [18][and the form and manner in which the names of the printer, publisher, owner and editor of a newspaper and the place of its printing and publication may be printed on every copy of such newspaper] ;

[19][(*b*) prescribing the manner in which copies of any declaration attested by the official seal of a Magistrate or copies of any order refusing to authenticate any declaration may be forwarded to the person making and subscribing the declaration and to the Press Registrar ;]

(*c*) prescribing the manner in which copies of any newspaper may be sent to the Press Registrar under section 11B ;

(*d*) prescribing the manner in which a Register may be maintained under section 19B and the particulars which it may contain ;

(*e*) prescribing the particulars which an annual statement to be furnished by the publisher of a newspaper to the Press Registrar may contain ;

(*f*) prescribing the form and manner in which an annual statement under clause (*a*) of section 19D, or any returns, statistics or other information under section 19E may be furnished to the Press Registrar ;

(g) prescribing the fees for furnishing copies of extracts from the Register and the manner in which such copies may be furnished ;

(*h*) prescribing the manner in which a certificate of registration may be issued in respect of a newspaper ;

(*i*) prescribing the form in which, and the time within which, annual reports may be prepared by the Press Registrar and forwarded to the Central Government.

[1][(2) Every rule made under this section shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days

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17 Ins. by s. 18, *ibid.*, (w.e.f. 1-7-1956).

18 Ins. by Act 26 of 1960, s. 8 (w.e.f. 1-10-1960).

19 Subs. by s. 8, *ibid.*, for cl. (*b*) (w.e.f. 1-10-1960).

1 Subs. by Act 26 of 1960, s. 8, for sub-section (2) (w.e.f. 1-10-1960).

which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be ; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]]

[2][**20B. Rules made under this Act may provide that contravention thereof shall be punishable.**—Any rule made under any provision of this Act may provide that any contravention thereof shall be punishable with fine which may extend to one hundred rupees.]

21. Power to exclude any class of books from operation of Act.—[3][The State Government may, by notification in the Official Gazette] exclude any class of books [4][or papers] from the operation of the whole or any part or parts of this Act :

[5][Provided that no such notification in respect of any class of newspapers shall be issued without consulting the Central Government.]

[6][**22.** Extent.—This Act extends to the whole of India [7]* *.]

23. [*Commencement of Act.*] *Rep. by the Repealing Act,* 1870 (14 *of* 1870), *s.* 1 *and Sch., Pt. II.*

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[2] Ins. by s. 9, *ibid.*, (w.e.f. 1-10-1960).

[3] Subs. by the A. O. 1937, for certain words.

[4] Ins. by Act 11 of 1915, s. 2 and Sch. I.

[5] Ins. by Act 26 of 1960, s. 10 (w.e.f. 1960).

[6] Ins. by Act 55 of 1955, s. 19 Original s. 22 was rep. by Act 10 of 1890, s. 7 (w.e.f. 1-7-1956).

[7] The words "except the State of Jammu and Kashmir" omitted by Act 16 of 1965, s. 4 (w.e.f. 1-11-1965).

THE REGISTRATION OF NEWSPAPERS (CENTRAL) RULES, 1956

1. Short title and commencement.—(1) These rules may be called the Registration of Newspapers (Central) Rules, 1956.

(2) They shall come into force on the 1st day of July, 1956.

2. Definition. —In these rules, unless the context otherwise requires,

(*a*) 'Act' means the Press and Registration of Books Act, 1867 ;

(*b*) 'Form' means a Form specified in the Schedule to these rules ;

(*c*) 'Publisher' means the publisher of a newspaper.

3. Form of declaration.—Every declaration made under section 5 of the Act shall be in Form I and the person making the declaration shall give full and true particulars therein.

[1][**4. Transmission of copies of declaration etc. to the person concerned and to the Press Registrar.**— A copy of every declaration attested by the Official Seal of a Magistrate and a copy of every order refusing to authenticate any declaration shall be sent by the Magistrate to the person making and subscribing the declaration and to the Press Registrar by registered post:

Provided that in the case of a person making and subscribing the declaration any such copy may be delivered to him personally if he is present at the time when the attestation is made or, as the case may be, the order of refusal is passed.]

5. Delivery of copies of newspaper to the Press Registrar.— (1) Every publisher shall, within 48 hours of the publication of an issue of his newspaper, send to the Press Registrar one copy of the issue by post or by a messenger:

Provided that where any newspaper publishes more than one edition under the same declaration and the retail selling price charged for, or the number of pages contained in, an issue of any such addition is different from an issue of any other edition, one copy of the issue of each such edition shall also in like manner be sent to the Press Registrar.

(2) For the purposes of sub-rule (1)—

(*a*) copies of the issue of newspapers published in Hindi, Urdu or English and of newspapers published in two languages, one of which is Hindi, Urdu or English, shall be sent to the Press Registrar in [2][Simla] ;

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[1] Subs. by G.S.R. 1222 dated 5-10-1960.

(*b*) copies of the issues of newspapers published in any of the regional languages specified in column I below shall be sent to the Officer in charge of the Regional Officer of the Press Information Bureau, Ministry of Information and Broadcasting, Government of India, at the place specified in the corresponding entry in column II and the officer shall take delivery of such newspaper on behalf of the Press Registrar: —

I	II
Punjabi	Jullundur
Bengali	Calcutta
Oriya	Cuttack
Assamese	Gauhati
Tamil	Madras
Telugu	[3][Hyderabad]
Malayalam	[4][Trivandrum]
Marathi	Bombay
Konkani and Portuguese	Bombay
Gujarati	[5][Ahmedabad]
Kannada	Bangalore
Kashmiri	Srinagar

(*c*) copies of issues of newspapers published in any other language shall be sent to the Press Registrar in [6][Simla.]

6. Annual Statement.—(1) Every publisher shall, in respect of his newspaper or each of his newspapers, furnish to the Press Registrar an annual statement relating to each calendar year in Form II containing the particulars specified therein, so as to reach the Press Registrar on or before the last day of February of the following year.

Note :—The statement to be submitted on or before the last day of February 1957 need relate only to the period from 1st July, 1956 to 31st December, 1956.

(2) Whenever there is a change in the retail selling price of a newspaper as furnished in any statement, the publisher shall, within 48 hours of such change, send intimation thereof to the Press Registrar.

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[2] Subs. for the word 'New Delhi' by G.S.R. 1059 dated 29-8-1960.

[3] Subs. for the words 'Madras' by G.S.R. 1059 dated 29-8-1960.

[4] Subs. for the word 'Erankulam' by G.S.R. 721 dated 14-4-1970.

[5] Subs. for the word 'Bombay' by G.S.R. 723 dated 17-4-1963, w.e.f. 1.5.1963.

[6] Subs. for the word 'New Delhi', by G.S.R. 1959 dated 29-8-1960.

7. Maintenance of the Register.—(1) The Press Registrar shall maintain a Register of Newspapers in Form III.

(2) The pages of the Register shall be numbered consecutively and entries in respect of a newspaper shall start from a fresh page. When particulars enumerated in Form I have been entered in the Register in respect of a newspaper, the Press Registrar shall allot a registration number to that newspaper. Initial entries in the Register and subsequent changes, if any, shall be duly authenticated under the signature of the Press Registrar.

(3) The Press Registrar shall, in respect of every newspaper, cause relevant entries to be made in the Register and before making any entry therein, he may make such verification of the statements furnished to him by the newspaper as he may consider necessary.

[7][**8. Particulars to be published in every newspaper.**—(1) The publisher shall publish in every issue of his newspaper the retail selling price of each copy, or, when there is no such selling price, shall publish in an appropriate place that it is for free distribution. The publisher shall also publish in the first issue after the last day of February of each year the particulars specified in Form IV.]

[8][(2) Every copy of every newspaper shall have printed legibly on it the names of the printer, publisher, owner and editor and the place of its printing and publication in the following form:

Printed by.........and published by.........on behalf of......... (name of owner).........and printed at......(place of printing)......... and published at.........(place of publication).........Editor.........

Note.—This form may be modified to suit the circumstances of each paper, for example, where the printer, publisher and owner are the same the imprint line can be: Printed, published and owned by.........The editor's name, however, should be given separately in every case.]

9. Furnishing of extracts from the Register.—The Press Registrar shall, on an application made to him in writing and on payment of a fee of rupees five in respect of each newspaper, furnish to the applicant extracts from the Register duly certified by him.

10. Certificate of registration.—(1) Where a publisher makes a declaration before a Magistrate, the Press Registrar shall, as soon as practicable, after receipt of the copy of the declaration, issue to the publisher a certificate of registration in Form V.

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[7] Numbered as sub-rule (1) for 'Rule 8' by G.S.R. 1222 dated 5-10-1960.

[8] Ins. by G.S.R. 1222 dated 5-10-1960.

(2) On receipt of information furnished by the publisher of a newspaper and upon allotting under rule 7(2) a registration number to that newspaper, the Press Registrar may also issue to the publisher a certificate of registration in Form V.

(3) Whenever there is any change in the particulars mentioned in the Certificate of Registration issued under sub-rule (1) or sub-rule (2), the publisher shall, as soon as may be, send intimation of such change to the Press Registrar and also return to him such Certificate; and on receipt of such information and Certificate, the Press Registrar shall cause the relevant entries to be made in the Register and reissue the Certificate with the changes.

(4) The Certificate of Registration shall cease to be effective as soon as the declaration under which the newspaper is published becomes void or a newspaper is removed from the Register of Newspapers maintained by the Press Registrar.

11. Annual Report.—The Press Registrar shall submit to the Central Government on or before the 30th April of each year an annual report containing information and statistics about the Press in India, and in particular, circulation trends in different categories of newspapers and the trends in the direction of common ownership of more than one newspaper:

Provided that the annual report to be submitted on or before the 30th April 1957 may relate only to the period from 1st July 1956 to 31st December 1956.

[9][**12. Penalty.**—A contravention of any of the provisions of these rules shall be punishable with fine which may extend to one hundred rupees.]

SCHEDULE

FORM I

... ... *Form of Declaration* ...

(*See* Rule 3)

I,————, declare that I am the *printer or *publisher or *printer and publisher of the newspaper entitled————to be *printed at————and *published at————or to be *printed and published at————and that particulars in respect of the said newspaper given hereunder are true to the best of my knowledge and belief.

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[9] Added by G.S.R. 304 dated 26-2-1966.

*Strike out whatever is not applicable.

1. Title of the newspaper.
2. Language(s) in which it is (to be) published.
3. Periodicity of its publication.
   (*a*) Whether a daily, tri-weekly, bi-weekly, weekly, fortnightly, or otherwise.
   (*b*) In the case of a daily, please state whether it is a morning or evening newspaper?
   (*c*) In the case of a newspaper other than a daily, please state the day(s)/date(s) on which it is (to be) published.
4. Retail selling price of the newspaper per copy.
   (*a*) If the newspaper is for free distribution, please state that it is "for free distribution".
   (*b*) If it has only an annual subscription and on retail price, please state the annual subscription.
5. Publisher's name.
   Nationality.
   [10][(a) Whether a citizen of India?
   (b) If a foreigner, please state the country of origin.]
   Address.
6. Place of publication (please give the complete postal address.)
7. Printer's name.
   Nationality.
   [11][(a) Whether a citizen of India?
   (b) If a foreigner, please state the country of origin.]
   Address.
8. Name(s) of the printing press(es) where printing is to be conducted and true and precise description of the premises on which the press(es) is/are installed.
9. Editor's name.
   Nationality.
   [11][(a) Whether a citizen of India?
   (b) If a foreigner, please state the country of origin.]
   Address.

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[10] Inserted by G.S.R. 823 dated 12-3-1969.

[11] Inserted by G.S.R. 823 dated 12-3-1969.

10. Owner's name(s).
    (a) Please state the particulars of individual(s) or of the firm, Joint Stock Company, trust, cooperative society or association which owns the newspaper.
    (b) Please state whether the owner owns any other newspaper and, if so, its name, periodicity, language and place of publication.
11. Please state whether the declaration is in respect of
    (a) a new newspaper, or
    (b) an existing newspaper,
    (c) in case the declaration falls under item (b), the reason for filing the fresh declaration.

Date..............

Signature..........................
Name (in block letters)..........................
Designation..........................

Note.—Separate declarations should be filed by the printer and the publisher unless the printer and the publisher is the same person.

UNIVERSITY COLLEGE OF LAW LIBRARY

FORM II

Annual Statement in respect of the newspaper entitled..................for the period ending 31st December, 19

[*See* Rule 6(I)]

Serial No.	Items	Details of particulars	Particulars of changes, if any, during the year with date(s) of changes	Remarks
1	2	3	4	5
	'A'—GENERAL			
1.	Declaration under which the newspaper is published.			
2.	Registration number of the newspaper.			
3.	Title of the newspaper.			
4.	Language(s) in which the newspaper is published.			
5.	Periodicity of its publication :			
	(a) whether a daily, tri-weekly, bi-weekly, weekly, fortnightly or otherwise.			
	(b) in the case of a daily, please state whether it is a morning or evening newspaper.			

Serial No.	Items	Details of particulars	Particulars of changes, if any during the year with date(s) of changes	Remarks
1	2	3	4	5
	(c) in the case of a newspaper other than a daily please state the day(s) date(s) on which it is published.			
6.	Publisher's Name			
	Nationality [1][(a) Whether a citizen of India ? (b) If a foreigner, please state the country of origin.]			
	Address			
7.	Place of publication (please give the complete postal address).			
8.	Printer's Name			
	Nationality [1][(a) Whether a citizen of India ? (b) If a foreigner, please state the country of origin.]			
	Address			

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1. Inserted by G.S.R. 823 dated 12-3-1969.

9. Name(s) of the printing press(es) where printing is conducted and she true and precise description of the premises on which the press(es) is/are installed.			
10. Editor's Name Nationality [1][(a) Whether a citizen of India ? (b) If a foreigner, please state the country of origin.]			
Address			
11. (a) Size of the page of the newspaper in inches and its description, *e.g.*, demy, crown, etc. (b) Average number of pages per week in respect of daily, bi-weekly, tri-weekly and weekly newspapers. (c) Average number of pages per issue in respect of other newspapers.			

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[1] Inserted by G.S.R. 823 dated 12-3-1969.

12. Number of days of publication in a year.	Jan.	Feb.	March	April	May	June	July	Aug.	Sep.	Oct.	Nov.	Dec.	Total

I,..,hereby declare that the particulars given above are true to the best of my knowledge and belief.
(Name in block letters)

Date........................

Signature of Publisher..................................

'B'—CIRCULATION	Jan.	Feb.	March	April	May	June	Half* yearly average	July	Aug.	Sep.	Oct.	Nov.	Dec.	Half* yearly average
13. (a) Average number of copies printed per publishing day.														
(b) If the newspaper is not published daily, please state the number of days on which the newspaper was published during a month and the number of copies printed on each of these days.														
14. Average number of copies sold per publishing day.														
15. Average number of copies distributed free per publishing day (including complimentary, voucher, exchange, bonus, sample and office copies).														
16. Retail selling price per copy.														
(a) if the newspaper is for free distribution, please state that it is for "free distribution".														
(b) if it has only an annual subscription and no retail price, please state the annual subscription.														

*Half-yearly average should be calculated on the basis of the total number of days of publication during the period.

Publisher's Declaration

I,..............................publisher of..............................do hereby declare that the particulars shown
(Name in block letters)
in the statement set forth above are true and correct to the best of my information, knowledge and belief.

Signature of publisher..............................

Date..............................

Certificate by Chartered Accountant [1][***]

We have examined the books and accounts of......(Name of paper)......for the period ending.............. and have obtained all the information and explanations required by us. In our opinion the statement set forth above/enclosed reflects true and correct analysis of the sales of the publisher for the period ending................ to the best of our information and belief and according to the explanations given to us and as shown by the books of accounts.

(Signature)..................................
(Name in block letters)
Chartered Accountant
[1][***]
Registration No..................

Date..............................

*In respect of newspaper where the average number of copies printed per publishing day does not exceed 2,000, certificate by a chartered accountant or a qualified auditor in the form prescribed above is not necessary. Such certificate is also not necessary in the case of charitable institutions, charitable societies or associations which publish newspapers generally for the use of their members and not for sale.

---

[1] The words "or qualified Auditor" omitted by G.S.R. 203 dated 20-1-1970.

'C'—OWNERSHIP	Name	Address	Value of share of capital	Whether related to other shareholders by marriage, blood relationship or otherwise
	1	2	3	4
17. (a) Names and addresses of the owners of the newspaper (particulars need be given only of individuals who own the newspaper and partners or shareholders holding more than one per cent of the capital). (b) Also state : (i) If the owner is a firm—whether it is registered or unregistered, and particulars of partners who own more than one per cent of the capital. (ii) If the owner is a Joint Stock Company : whether a public limited company or a private limited company, and the names and addresses of Chairman and members of the Board of Directors and shareholders holding more than one per cent of the capital.				

(iii) If the owner is a Joint Stock Company and is managed by a managing agent—whether the managing agent is an individual, a firm or a Joint Stock Company, and the particulars referred to in part (a) or items (i) and (ii) of part (b) as the case may be.

(iv) If the proprietor is a trust, cooperative society, society or association—names and addresses, etc., of Chairman and members of the Trust/Executive, etc.

(v) Any other form of ownership and details about the share of each owner.

Note: (i) All the relevant information should be furnished to disclose effective ownership of the newspaper.

(ii) Items not applicable should be scored out.

18. The known bond holders, debenture holders, mortgagees and other security holders owning or holding one per cent or more of the total amount of bonds, mortgages or other securities.

Note : In case where the stock holder or security holder appears upon the books of the company as trustee or in any other fiduciary relation the name of the person or corporation for whom such trustee is acting should also be furnished.

I, ...,hereby declare that the particulars given above are true to the best of
(Name in Block letters)
my knowledge and belief.

Dated..........................

Signature of publisher..

FORM III

Register of Newspaper

[*See* Rule 7 (I)]

1. Declaration number under which the newspaper is published . .
2. Registration number of the newspaper . . . . . .
3. Title of the newspaper . . . .
4. Language/languages in which the newspaper is published . . .
5. (a) Periodicity of the publication of the newspaper . . . .
   (b) Day(s)/date(s) of publication (in the case of publications not published every day) . . . .
6. Editor's Name . . . .
   Nationality . . . .
   [1][(a) Whether a citizen of India ? . . . . . .
   (b) If a foreigner, the country of origin.] . . . .
   Address . . . .
7. Printer's Name . . . .
   Nationality . . . .
   [1][(a) Whether a citizen of India ? . . . . . .
   (b) If a foreigner, the country of origin.] . . . .
   Address . . . .

---

[1] Inserted by G.S.R. 823 dated 12-3-1969.

	1 January to June	2 July to December
8. Publisher's Name		
Nationality		
[1][(a) Whether a citizen of India ?		
(b) If a foreigner, the country of origin.]		
Address		
9. (a) True and precise account of premises where the printing is conducted		
(b) Place of publication		
10. (a) Average number of pages per week in respect of daily, bi-weekly, tri-weekly and weekly newspapers		
(b) Average number of pages per issue in respect of other newspapers.		
11. Total number of days of publication in the year		
12. (a) Average number of copies printed		
(b) Average number of copies sold		
(c) Average number of copies distributed free		
13. Retail selling price per copy		
Names and addresses of individuals who own the newspaper and partners or shareholders holding more than one per cent of the total capital		

---

1. Inserted by G.S.R. 823 dated 12-3-1969.

FORM IV

Statement about ownership and other particulars about newspaper (..................................) to be published in the first issue every year after the last day of February

(*See* Rule 8)

1. Place of Publication
2. Periodicity of its publication
3. Printer's Name
    Nationality
    [1][(a) Whether a citizen of India ?
    (b) If a foreigner, the country of origin.]
    Address
4. Publisher's Name
    Nationality
    [1][(a) Whether a citizen of India ?
    (b) If a foreigner, the country of origin.]
    Address
5. Editor's Name
    Nationality
    [1][(a) Whether a citizen of India ?
    (b) If a foreigner, the country of origin.]
    Address
6. Names and addresses of individuals who own the newspaper and partners or shareholders holding more than one per cent of the total capital

I.................................., hereby declare that the particulars given above are true to the best of my knowledge and belief.

Date.......................... Signature of publisher......................

---

[1] Inserted by G.S.R. 823 dated 12-3-1969

FORM V

Certificate of Registration.

(*See* Rule 10)

Government of India (seal)

This is to certify that the newspaper entitled...............has been registered under the Press and Registration of Books Act, 1867.

1. Title of the newspaper.
2. Registration number of the newspaper.
3. Language/Languages in which it is published.
4. Periodicity of its publication and the day/days/dates on which it is published.
5. Retail price of the newspaper.
6. Publisher's Name :
   Nationality :
   [1][(a) Whether a citizen of India?
   (*b*) If a foreigner, the country of origin.]
   Address :
7. Printer's Name :
   Nationality :
   [1][(a) Whether a citizen of India?
   (b) If a foreigner, the country of origin.]
   Address :
8. Editor's Name :
   Nationality :
   [1][(a) Whether a citizen of India?
   (b) If a foreigner, the country of origin.]
   Address :
9. True and precise account of the premises where the printing is conducted.
10. Place of publication.

Dated....................

Registrar of Newspaper for India.

---

[1] Inserted by G.S.R. 823 dated 12-3-1969.

THE PRESS AND REGISTRATION APPELLATE BOARD (PRACTICE AND PROCEDURE) ORDER, 1961

1. Short title.—This order may be called the Press and Registration Appellate Board (Practice and Procedure) Order, 1961.

2. Definitions.—In this Order,

(a) "Act" means the Press and Registration of Books Act, 1867 ;

(*b*) "Board" means the Press and Registration Appellate Board constituted under section 8C of the Act.

3. Form of appeal.—(1) Every appeal presented to the Board under section 8C of the Act shall be in the form of a memorandum signed by the appellant and the memorandum shall be accompanied by a copy of the order appealed against.

(2) The memorandum shall contain the full name and address of the appellant and shall set forth concisely the grounds of objection to the order appealed against.

4. Dismissal of time-barred appeals—Where the appeal is not presented within the time specified in sub-section (1) of section 8C of the Act and the Board is satisfied that the appellant was not prevented by sufficient cause from preferring the appeal in time, the Board may dismiss the appeal.

5. Power to call for records.—If the appeal is not dismissed under clause 4, the Board shall call for the records of the case from the Magistrate against whose order the appeal has been preferred.

6. Date of hearing.—(1) After receipt of the records of the case, the Board shall fix a date for the hearing of the appeal,

(2) A notice of the date of hearing of the appeal shall be given to the appellant and may be given to such other person as the Board may think fit.

7. Hearing of appeal.—(1) On the date fixed for the hearing of the appeal or any other date to which the hearing of the appeal may be adjourned, the Board shall hear such persons to whom notice has been given under sub-clause (2) of clause 6 as are present.

(2) After hearing the persons referred to in sub-clause (1) and perusing the records, the Board may decide the appeal.

8. Contents of the order in appeal.—The order of the Board shall be in writing, shall state briefly the grounds for the decision and shall be signed by the Chairman and the other member of the Board.

9. Communication of the order.—The order of the Board shall be communicated to the appellant, the Press Registrar and the Magistrate.

10. Representation by legal practitioners.—The appellant and any other persons to whom notice has been given under sub-clause (2) of clause 6 may appoint a legal practitioner to appear, plead and act on his behalf before the Board.

11. Service of notice.—A notice under this Order may be issued by the Chairman of the Board or, if he so directs, by the other member of the Board, and shall be served on the person concerned,—

(a) by delivering or tendering it to that person or to a legal practitioner appearing on his behalf ; or

(b) by registered post.

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